1928.

NEW ZEALAND.

CONFISCATED NATIVE LANDS AND OTHER GRIEVANCES.

ROYAL COMMISSION TO INQUIRE INTO CONFISCATIONS OF NATIVE LANDS AND OTHER GRIEVANCES ALLEGED BY NATIVES (REPORT OF).

Laid on the Table of the House of Representatives by Command.

COMMISSION

TO INQUIRE INTO AND REPORT AS TO GRIEVANCES ALLEGED BY MAORIS.

CHARLES FERGUSSON, Governor-General.

To all to whom these presents shall come, and to the Honourable SIR WILLIAM ALEXANDER SIM, Kt., of Dunedin, and to the Honourable VERNON HERBERT REED, M.L.C., of Paihai, Bay of Islands, and to WILLIAM COOPER, Esquire, of Gisborne, Native Associate: Greeting!

WHEREAS under the powers conferred by the New Zealand Settlements Act, 1863, the New Zealand Settlements Act Amendment, 1864, the New Zealand Settlements Amendment and Continuance Act, 1865, and the New Zealand Settlements Acts Amendment Act, 1866 (hereinafter collectively referred to as "the said Acts"), Proclamations and Orders in Council were from time to time made pursuant to which lands therebefore held by Natives became Crown lands freed and discharged from the title, interest, or claim of such Natives by reason of the fact that such Natives or some of them had been engaged in rebellion against Her then Majesty's authority, the purpose of the said Acts being (as recited in the said New Zealand Settlements Act, 1863) that it was necessary that adequate provision should be made for the permanent protection and security of the well-disposed inhabitants of both races, for the prevention of future insurrection or rebellion, and for the establishment and maintenance of Her Majesty's authority and of law and order throughout the colony, the best and most effectual means of attaining those ends being the introduction of a sufficient number of settlers able to protect themselves and preserve the peace of the country:

And whereas provision was made by the said Acts for compensation to be granted to all such persons as had any title, interest, or claim to any land taken under the said Acts; excluding from any such compensation the classes of persons defined in section five of the New Zealand Settlements Act, 1863; such compensation being ascertained in the manner provided by the said Acts by the awards of Compensation Courts or by the Government, and being granted either in money, or in scrip, or by grant of land:

And whereas numerous claims for compensation under the said Acts were made and dealt with in favour of such Natives having title to the lands taken under the said Acts as were proved to have been either loyal to the Crown or neutral, and consequently not within the classes excluded by the said section five of the said Act of 1863. But many Natives now allege that they (or Natives under whom they claim living at the time of the passing of the said Acts) were loyal to the Crown or neutral and were entitled to or interested in some of the lands so taken, and have not received compensation therefor. And from time to time before and since the repeal of the said Acts petitions or claims have been presented to the Government or to Parliament, and some of such claims have been inquired into and dealt with:

And whereas it is alleged on behalf of those Natives entitled or interested in the lands so taken under the said Acts who (or Natives under whom they claim) were actually in rebellion against Her Majesty or otherwise within the classes excluded from compensation by the said section five of the Act of 1863, that the confiscation of their title and interest was (*a*) excessive in quantity or (*b*) improper in the inclusion in the confiscation of land which should properly have been reserved for Native purposes:

And whereas for many years past complete peace has existed between the two races, and it is deemed desirable to review the whole position created by and consequent upon the said Acts, and to cause inquiry to be made as hereafter provided with the object of enabling Parliament to remedy such grievances as may appear now to have just and reasonable foundation:

Now, therefore, I, General Sir Charles Fergusson, Baronet, Governor-General of the Dominion of New Zealand, in exercise of the powers conferred by the Commissions of Inquiry Act, 1908, and of all other powers and authorities enabling me in this behalf, and acting by and with the advice and consent of the Executive Council of the said Dominion, do hereby constitute and appoint you, the said

Sir William Alexander Sim,
Vernon Herbert Reed, and
William Cooper

to be a Commission to inquire into and report upon the following matters:—

1. Whether, having regard to all the circumstances and necessities of the period during which Proclamations and Orders in Council under the said Acts were made and confiscations effected, such confiscations or any of them exceeded in quantity what was fair and just, whether as penalty for rebellion and other acts of that nature, or as providing for protection by settlement as defined in the said Acts.
2. Whether any lands included in any confiscation were of such a nature as that they should have been excluded for some special reason.
3. Whether any, and, if so, what Natives (having title or interest in lands confiscated) are in your opinion justly entitled to claim compensation in respect of the confiscation of such title or interest, and, if so, what Natives or classes or families of Natives are now entitled by descent or otherwise to claim and receive such compensation.
4. Whether reserves or other provision subsequently made for the support and maintenance of Natives within one or more of the classes excepted by the said section five were in regard to any particular tribe or hapu inadequate for the purpose:

Provided that, in considering the subject-matter of question 1, (*a*) you shall not have regard to any contention that Natives who denied the sovereignty of Her then Majesty and repudiated Her authority could claim the benefit of the provisions of the Treaty of Waitangi; (*b*) you shall not accept any contention that the said Acts or any of them were *ultra vires* of the Parliament of the Dominion; (*c*) you shall have regard to the then circumstances of the colony and in estimating the value of an excess of confiscation (if any) you shall have regard to the value of the confiscated land as at the date of confiscation, and not to any later increment of the value thereof.

And, in respect of your inquiry under question 1, if you find that the said confiscations or any of them were in fact excessive, having regard to the matters which hereinbefore you are directed to take into consideration, you shall report what compensation in money should in your opinion be made in respect of such excess of confiscation, and shall further report whether the amount of such compensation should be appropriated for the benefit of any special person, tribe, or hapu, or (having regard to the difficulty of present ascertainment of title) should be appropriated in such manner that it may be applied for the benefit of all the Natives of the North Island of New Zealand.

And you are hereby further authorized to inquire into the claims and allegations made by the respective petitioners in the petitions referred to in the Schedule hereto so far as such claims and allegations are not covered by the preceding terms of this Commission and to make such recommendation thereon as appear to accord with good conscience and equity in each case.

And with the like advice and consent I do further appoint you the said

Sir WILLIAM ALEXANDER SIM

to be the Chairman of the said Commission.

Any you are hereby authorized and required to conduct any inquiry under these presents at such times and places as you deem expedient, with power to adjourn from time to time and place to place as you think fit, and to call before you and examine on oath or otherwise such persons as you think capable of affording you information on any of the matters aforesaid, and to call for and examine all such documents as you deem necessary to afford you the fullest information on any such matters; and you or any two of you shall and may from time to time proceed to the execution hereof and of any power, matter, or thing herein contained.

And using all diligence you are required to report to me under your hands and seals not later than the thirtieth day of June, one thousand nine hundred and twenty-seven, your opinion on the aforesaid matters.

And you are hereby strictly charged and directed that you shall not at any time publish or disclose, save to me in pursuance of these presents, or by my directions, the contents of purport of any report so made or to be made by you.

And it is hereby declared that these presents shall continue in full force although your inquiry is not regularly continued from time to time or from place to place.

And, lastly, it is hereby further declared that these presents are issued under and subject to the provisions of the Commissions of Inquiry Act, 1908.

SCHEDULE.

BAY OF PLENTY DISTRICT.

1. THE prayer of the petition of Te Kapo-o-te Rangi Keehi and 237 others, for the return of the confiscated land of the Tuhoe Tribe. (Petition No. 324/1920, and file N.D. 1921/528.)

2. The prayer of the petition of Te Hurinui Apanui and 605 others, for inquiry as to the lands in the Whakatane District confiscated by the Government. (Petition No. 142/1922, and file N.D. 1922/408.)

3. The prayer of the petition of Pouawha Meihana and 23 others, that the lands confiscated from them at Whakatane owing to the murder of James Fulloon be returned to them. (Petition No. 169/1922, and file N.D. 1922/409.)

4. The prayer of the petition of Wi Duncan and 42 others, that a grant of land may be made for the use of the Ngamaihi Tribe. (Petition No. 358/1922, and file N.D. 1922/451.)

5. The prayer of the petition of Reweti Rewiri Manuariki, for the return of land taken by the Government when the Ngatiawa lands were confiscated. (Petition No. 45/1924, and file N.D. 1924/398.)

6. The prayer of the petition of Te Naera te Houkotuku and 10 others, for relief in respect of hardships imposed by the confiscation of their lands. (Petition No. 149/1924, and file N.D. 1924/397.)

7. The prayer of the petition of R. te Hura Umukohukohu and 15 others, for inquiry into their positions as landless members of the hapus. (Petition No. 129/1923, and file N.D. 1924/237.)

8. The prayer of the petitions of Mehaka Watene and 168 others, Paku Eruera and 210 others, and Whareora Renata and others with respect to certain confiscated lands claimed by the Whakatohea Tribe. (Petitions Nos. 630/1914, 235/1915, and 336/1917.)

HAWKE'S BAY DISTRICT.

9. The prayer of the petition of Hemi P. Huata and 126 others, for an inquiry *re* confiscation of lands known as Taramarama and Opouiti Blocks. (Petition No. 147/1924, and file N.D. 1924/396.)

10. The prayer of the petition of Mako Kaimoana and 31 others, for the return of part of land known as Kauhouroa. (Petition No. 212/1920, and file N.D. No. 1924/409.)

11. The prayer of the petition of Heremia Maehe and 7 others, that an inquiry be granted in respect of twenty sections, each containing 50 acres, as shown on Deed No. 42 under the Act of the year 1867. (Petition No. 48/1923, and file N.D. 1924/409.)

12. The prayers of petitions—
No. 71/1924, of Te Paea Ahipene and 33 others;
No. 72/1924, of Timi Kara and 47 others;
No. 167/1924, of Te Rauna Hape and 43 others;
No. 267/1924, of Te Hata Tipoki;
for inquiry into alleged wrongful confiscation of the Kauhouroa Block. (See file N.D. 1924/409.)

13. The prayer of the petition of Teo Kara and 5 others, for the return of reserves in Kauhouroa Block alleged to be confiscated. (Petition No. 362/1924, and file N.D. 1924/409.)

14. The prayer of the petition of Tuehu Pomare and 81 others, for the return of them of land known as Nuhaka No. 1 Block. (Petition No. 167/1922, and file N.D. 1925/234.)

15. The prayer of the petition of Matairangi Rore and 51 others, for the return of land alleged to have been wrongfully included in sale of Nuhaka No. 1 Block. (Petition No. 93/1926, and file N.D. 1926/392.)

16. The prayer of the petition of Heni Toheriri and 24 others, for return of Mangaopuraka Block, which is alleged to have been wrongfully included in sale of the Nuhaka Block. (Petition No. 91/1925, and file N.D. 1925/234.)

17. The prayer of the petition of Whakangaro Makahue and 67 others *re* Mangaopuraka Block. (Petition No. 43/1924, file N.D. 1925/234.)

18. The prayer of the petition of Ngahiwi Peka and 53 others, for an inquiry into sale of land to the Crown by Ihaka Whanga and others in the Mahia Block. (Petition No. 87/1924, and file N.D. 1924/406.)

19. The prayer of the petition of Riwia Kupa and 152 others, for an inquiry by a Royal Commission in respect of the sale of the Mohaka Block.

ARAWA DISTRICT.

20. The prayer of the petition of Te Hautapu Whare Hira and 23 others, that legislation be enacted to restore to petitioners certain Te Puke confiscated lands, and compensation granted. (Petition No. 86/1923, Session II, and file N.D. 1924/252.)

21. The prayer of the petition of Ataria Mohi Moke and 73 others, that a grant of land may be made to the Ngati-Tumatawera Tribe on account of the loss sustained owing to the Tarawera eruption. (Petition No. 345/1922, and file N.D. 1922/452.)

TAURANGA DISTRICT.

22. The prayer of the petition of Rotohiki Pakana and 7 others, for the grant to them of a block of land in the Parish of Apata, County of Tauranga. (Petition No. 154/1920, and file N.D. 1920/337.)

23. The prayer of the petition of George R. Hall and 9 others, that a grant of land be made for the benefit of the Ngatiatamarawaho Subtribe. (Petition No. 269/1920, and file N.D. 1924/252.)

24. The prayer of the petition of Nepia Kohu and 628 others, for relief from the oppression caused by the erroneous inclusion of their lands in the Tauranga confiscated area. (Petition No. 153/1923, Session II, and file N.D. 1924/252.)

WAIKATO DISTRICT.

25. The prayer of the petition of Anaru Makiwhara te Rira and 23 others, for relief in connection with confiscated lands known as Otau and Wairoa Blocks. (Petition No. 379/1924, and file N.D. 1924/420.)

26. The prayer of the petition of Margaret L. Evans, that a grant be made of certain lands in Waikato District to which she alleges she is entitled, or for compensation in lieu thereof. (Petition No. 62/1924, and file N.D. 1924/414.)

27. The prayer of the petition of Margaret L. Evans for grant of certain lands in the Waikato District to which she claims to be entitled or for adequate compensation in lieu thereof. (Petition No. 61/1926, and file N.D. 1926/391.)

28. The prayer of the petition of Te Wharau Herewini and 9 others, regarding their claims in connection with Waikato confiscated lands. (Petition No. 18/1925, and file N.D. 1925/321.)

TARANAKI DISTRICT.

29. The prayer of the petition of Rangihuna Piri and 3 others, for a further grant of land in connection with the "Continuous Reserve" in the Taranaki District which was set aside for certain members of the Ngatitu Hapu. (Petition No. 281/1921, Session II, and file N.D. 1923/262.)

30. The prayer of the petition of George Ashdown, regarding claim in connection with Taranaki confiscated lands. (Petition No. 10/1925, and file N.D. 1925/322.)

31. The prayer of the petition of Wiremu te Kupenga Kahao and 2 others, regarding their claims in connection with Taranaki confiscated lands. (Petition No. 19/1925, and file N.D. 1925/322.)

32. The prayer of the petition of Pouwhareumu Toi and 19 others, regarding their claims in connection with confiscated lands between Parininihi and Waitotara. (Petition No. 44/1925, and file N.D. 1925/322.)

33. The prayer of the petition of Kapua Keepa and 6 others, regarding their claims in connection with confiscated lands between Purangi and Tarata. (Petition No. 74/1925, and file N.D. 1925/322.)

34. The prayer of the petition of Ranginui Kauika, praying for the return of the confiscated land of the Ngatipoura Tribe. (Petition No. 79/1925, and file N.D. 1925/322.)

35. The prayer of the petition of Taupiri Ihaka Poroata and 20 others, praying for the return of confiscated lands, Te Ruatangata, Matakitaki, &c., Taranaki District. (Petition No. 80/1925, and file N.D. 1925/322.)

36. The prayer of the petition of Tunga Paekawa and 11 others, for the return of confiscated lands in the Taranaki District. (Petition No. 87/1925, and file N.D. 1925/322.)

37. The prayer of the petition of Tamati Whanganui and 13 others, for the return of confiscated lands of the Puketapu Tribe. (Petition No. 93/1925, and file N.D. 1925/322.)

38. The prayer of the petition of Tawhito Huterangu and 3 others, for the return of the Rangatatau Block, which was confiscated. (Petition No. 94/1925, and file N.D. 1925/323.)

39. The prayer of the petition of Te Ahi Rakei, for the return of the Rangitatau Block, which was confiscated. (Petition No. 81/1925, and file N.D. 1925/323.)

40. The prayer of the petition of Te Kapinga Makarati and others, that inquiry may be made into the manner in which the Crown acquired the lands of the Ngatitama, Ngatimutunga, and Kaitangata Tribes of the Taranaki District. (Petition No. 225/1925, and file N.D. 1925/393.)

41. The prayer of the petition of Te Okeroa Taotu and 253 others, for the return of confiscated and in the Taranaki District. (Petition No. 227/1926, and file N.D. 1926/395.)

NORTH AUCKLAND DISTRICT.

42. The prayer of the petition of Wiremu Henare Toka and 11 others, that the "tenths" in respect of the Ruakaka Block be paid to them. (Petition No. 402/1924, and file N.D. 1925/316.)

43. The prayer of the petition of Maki Pirihi and 60 others, that the Ruakaka "tenths" may be paid over to those legally entitled. (Petition No. 404/1924, and file N.D. 1925/316.)

44. The prayer of the petition of Wiremu Henare Toka and 33 others, for payment of the Poupou "tenths." (Petition No. 407/1924, and file N.D. 1925/317.)

45. The prayer of the petition of Wiremu Henare Toka and 32 others, that the "tenths" in connection with the Tokatoka Block and other lands be reserved to them of the proceeds of sale. (Petition No. 408/1924, and file N.D. 1925/318.)

46. The prayer of the petition of Paihau Rawiri and 31 others, that the "tenths" in connection with Ngapuhi and Thames lands may be paid to those legally entitled. (Petition No. 411/1924, and file N.D. 1925/319.)

47. The prayer of the petition of Wiremu Henare Toka and 49 others, that the "tenths" in connection with the Horotiu and other lands may be paid to those legally entitled. (Petition No. 412/1924, and file N.D. 1925/320.)

48. The prayer of the petition of Erana Paerimu and 19 others, claiming that the "tenths" in connection with the sale of Paeoterangi, Puatainga, and Hikurangi Blocks have never been paid. They pray that the undertaking may now be given effect to. Petition No. 351/1920, and file N.D. 1924/444.)

49. The prayer of Wiremu Ngapipi Reweti, that the 10-per-cent. promises in regard to the Hunua, Pukapuka No. 1, Te Pae-o-te-Rangi, Puatainga, and Hikurangi Blocks be carried out.

50. The prayer of the petition of Patu Hohaia and another, for inquiry into alleged wrongful taking of the Puketi Block, Whangaroa District. (Petition No. 157/1925, and file N.D. 1926/339.)

51. The prayer of the petition of Henare Pitimana and another, for inquiry into the title to the Pikiomaha Block, District of Matakana. (Petition No. 158/1925, and file N.D. 1925/276.)

52. The prayer of the petition of Herepeti Rapihana, that the report of the Royal Commission *re* Kaitaia Block be given effect to. (Petition No. 162/1924, and file N.D. 1925/379.)

53. The prayer of the petition of Hemi Riwhi and 2 others, praying for inquiry into the alleged sale of the Otangaroa No. 2 Block. (Petition No. 168/1925, and file N.D. 1926/337.)

54. The prayer of the petition of Hemi Riwhi and another, praying for inquiry into the alleged wrongful taking by the Crown of the Whironui Block, Sections 19 and 23, and for restitution. (Petition No. 185/1925, and file N.D. 1926/338.)

55. The prayer of the petition of Hone Hare and 44 others, for the return of Motukaraka Block. (Petition No. 38/1926, and file N.D. 1926/390.)

56. The prayer of the petition of James Maxwell and 2 others, for the return of the Okahukura Block to the descendants of the original purchaser—James Maxwell, sen. (deceased)—or for adequate compensation. (Petition No. 103/1926, and file N.D. 1926/397.)

Given under the hand of His Excellency the Governor-General of the Dominion of New Zealand, and issued under the Seal of that Dominion, this eighteenth day of October, one thousand nine hundred and twenty-six.

WM. DOWNIE STEWART,
For Native Minister.

Approved in Council.

C. A. JEFFERY,
Acting Clerk of the Executive Council.

REPORT.

To His Excellency the Governor-General of the Dominion of New Zealand.

MAY IT PLEASE YOUR EXCELLENCY,—

We, the Commissioners appointed by Your Excellency to inquire into and report upon certain specified questions in connection with the confiscation of Native lands under the New Zealand Settlements Act, 1863, and the amendments thereof, and also to inquire into the claims and allegations made by the respective petitioners in the petitions specified in the schedule to the Commission, have the honour to report as follows:—

1. We commenced our sittings in New Plymouth on the 9th February, 1927, and finished them in Wellington on the 12th May, 1927. We held sittings in New Plymouth, Waitara, Opotiki, Whakatane, Tauranga, Russell (Bay of Islands), Ngaruawahia, Wairoa (Hawke's Bay), and Wellington. The places selected for sittings and the dates of the sittings were those suggested by counsel who represented the Natives. Due notice of the times and places of these sittings was published in the *New Zealand Gazette* and also in the *Kahiti*. We wish to acknowledge the assistance afforded to us by counsel on both sides, and by the officers who attended our sittings. These included Mr. Shepherd, of the Native Department, Wellington, who was present at all the sittings; Mr. Gambrill (Wellington), Mr. Darby (Auckland), Mr. Moverley (New Plymouth), and Mr. Pfeifer (Napier), all of the Lands Department. These gentlemen spared no pains to supply us with as full and accurate information as it was possible to obtain, and this involved considerable work on their part, particularly in the case of Mr. Darby. We wish also to commend Mr. Watkins, of the *Hansard* staff, for the excellent way in which he reported the addresses and evidence.

QUESTION No. 1.

2. The first question we are directed to inquire into and report upon is this: "Whether, having regard to all the circumstances and necessities of the period during which Proclamations and Orders in Council under the said Acts were made and confiscations effected, such confiscations or any of them exceeded in quantity what was fair and just, whether as penalty for rebellion and other acts of that nature, or as providing for protection by settlement as defined in the said Acts." This question assumes that in every case confiscation was justified, and directs an inquiry as to the extent only of the confiscation. Mr. Smith, who appeared as counsel for the Natives in most of the cases, claimed that, notwithstanding this apparent limitation of the inquiry, the Natives were entitled to raise the question whether or not there should have been any confiscation at all. In support of this claim Mr. Smith relied on the fact that a number of the petitions referred to us for inquiry alleged that the confiscations were not justified, and in this way raised the whole question of the justice of the confiscations. Mr. Smith's contention was not really disputed by Mr. Taylor, who appeared for the Crown, and in each case the question whether or not there should have been any confiscation at all was raised and discussed. Mr. Smith contended that in dealing with this question under the several petitions we were not bound by the limitations imposed on us in connection with question No. 1, and that Natives who had denied the sovereignty of Her then Majesty and repudiated her authority could claim the benefit of the provisions of the Treaty of Waitangi. Mr. Taylor contended that the limitations referred to must be treated as applicable to all the petitions. It is true that in terms these limitations do not apply to the petitions referred to us for inquiry, but we think that in dealing with these petitions, and in ascertaining what accords with good conscience and equity, we should treat petitioners whose ancestors were rebels as not entitled, except in special circumstances, to claim the benefits of the Treaty of Waitangi.

Taranaki Confiscations.

3. We proceed now to deal with the question of the justice of the confiscations, and we take first the Taranaki case, as that was the first brought before us. In dealing with this subject it is not necessary to go further back than the Waitara purchase, which was made in the year 1859. The view now generally accepted of that transaction is that set forth by Mr. W. P. Reeves in his book "The Long White Cloud." This is what he has said on the subject (3rd ed., p. 196): "Colonel Gore Browne took the reins from Colonel Wynyard. The one was just such an honourable and personally estimable soldier as the other. But, though he did not involve his Parliament in ridicule, Governor Browne did much more serious mischief. In ordinary matters he took the advice of the Stafford Ministry, but in Native affairs the Colonial Office had stipulated that the Governor was to have an overriding power. He was to take the advice of his Ministers, but not necessarily to follow it. . . . On Governor Browne, therefore, rests the chief responsibility for a disastrous series of wars which broke out in 1860, and which were not finally at an end for ten years. The impatience of certain colonists to buy lands from the Maori faster than the latter cared to sell them was the simple and not too creditable cause of the outbreak. A broad survey of the position shows that there need have been no hurry over land acquisition. Nor was there any great clamour for haste, except in Taranaki, where rather less than 3,000 settlers restricted to 63,000 acres fretted at the sight of 1,750 Maoris holding and shutting up 2,000,000 acres against them." Then, after referring to the establishment of the Native Land League and to the virtual repeal of the Ordinance forbidding the sale of arms to Natives, Mr. Reeves continued thus: "Finally in 1860 came the Waitara land-purchase—the spark which set all ablaze. The name Waitara has been extended from a river both to a little seaport and to the surrounding district in Taranaki, the province where, as already said, feeling on the land difficulty had always been most acute. Enough land had been purchased, chiefly by Grey, to enable the settlement to expand into a strip of about twenty miles along the seashore, with an average depth of about seven miles. During a visit to the district, Governor Browne invited the Ngatiawa Natives to sell land. A chief, Teira, and his friends at once offered to part with 600 acres which they were occupying. The head of their tribe, however, Wiremu Kingi, vetoed the sale. The Native Department and the Governor sent down Commissioners, who, after inquiry, decided erroneously that Teira's party had a right to sell and the head chief none to interfere. A fair price was paid for the block and surveyors sent to it. The Ngatiawas good-humouredly encountered these with a band of old women well selected for their ugliness, whose appalling endearments effectually obstructed the survey work. Then, as Kingi threatened war, an armed force was sent to occupy the plot. After two days' firing upon a stockade erected there, the soldiers advanced and found it empty. Kingi, thus attacked, astutely made the disputed piece over to the King tribes, and forthwith became their *protege*. . . . It should be mentioned that while all this was going on the Premier, Mr. Stafford, was absent in England, and that his colleagues supported the Governor's action. Parliament did not assemble until war had broken out, and then a majority of members conceived themselves bound to stand by what had been done. Nevertheless, so great was the doubt about the wisdom and equity of the purchase that most of the North Island members even then condemned it. Most of the South Island members, who had much to lose and nothing to gain by war, supported it. Very heavily had their Island to pay for the Waitara purchase. It was not a crime, unless every purchaser who takes land with a bad title which he believes to be good is a criminal. But, probably wrong technically, certainly needless and disastrous, it will always remain for New Zealand the classic example of a blunder worse than a crime."

4. It is to be observed that the resolution to use military force, if necessary, for securing the completion of the purchase was adopted at a meeting of the Executive Council held at Auckland on the 25th January, 1860. The advice tendered to the Governor was as follows:—

"1st: That Mr. Parris be instructed to have the said land surveyed in the ordinary manner, and to take care that the Native chief, William King, be indirectly, but not officially, made aware of the day on which the survey will be commenced.

"2nd: Should William King or any other Native endeavour to prevent the survey or in any way interfere with the prosecution of the work, in that case that the surveying party be protected during the whole performance of their work by an adequate military force under the command of the Senior Military Officer; with which view power to call out the Taranaki Militia and Volunteers, and to proclaim martial law, be transmitted to the Commanding Officer at New Plymouth.

"3rd: That, when the survey shall have been completed, the Officer Commanding at New Plymouth shall, until further instructed, keep possession, by force if necessary, of the said land, so as to prevent the occupation or any act of trespass upon it by any Natives."

5. The Governor acted on this advice, and a Proclamation of martial law within the Province of Taranaki was thereupon signed by the Governor and countersigned by the Colonial Secretary. The attempt to carry out the survey was made on the 20th February, and subsequently a communication was made to Wiremu Kingi giving him twenty-four hours to apologize for the obstruction offered by his people and to notify his relinquishment of his opposition to the survey. His reply was that he did not desire war; that he loved the white people very much, but that he would keep the land, and that they (that is, he and the Government) might be very good friends if the survey were relinquished. On the 22nd February, 1860, the Proclamation of martial law was published in the English and Maori languages. This Proclamation recited that active military operations were about to be undertaken by the Queen's Forces against Natives in the Province of Taranaki in arms against Her Majesty's sovereign authority. The Governor proceeded to New Plymouth, where he arrived on the 1st March. He immediately dispatched to Wiremu Kingi a message requesting that, to prevent misunderstanding, he would come into town and learn the Governor's intentions, and offering a safe-conduct. Wiremu Kingi declined the invitation. On the 5th March the troops were moved down to Waitara and occupied a position on the disputed block. On the night of the 15th March a pa was built by some of Wiremu Kingi's people at Te Kohia, within the bounds of the block. The next day they pulled up the survey stakes and burnt them. On the 17th March the troops attacked the pa, and the Natives evacuated it before daylight on the morning of the 18th. The war, which commenced in this way, was continued until March, 1861, when it was terminated by an agreement between Hapurona (the Maori leader) and the Government. The terms included the investigation of the title to the Waitara Block and the completion of the survey.

6. During the course of the discussion before us reference was made to Sir William Martin's pamphlet, "The Taranaki Question," and to Mr. C. W. Richmond's memorandum in reply to it. In this memorandum the right of the Crown to the land was based on (1) the cession in 1841 of the whole Taranaki District by the Waikato chiefs, and (2) the purchase from Teira. The first ground appears not to have deserved serious consideration, for in the discussion which took place in 1863 between Sir George Grey, who had returned to New Zealand as Governor in September, 1861, and his Ministers as to the proposal to abandon the Waitara purchase the cession was not relied on or even referred to, and the Crown's claim to the block was based entirely on the agreement made with Teira. Sir George Grey, in his despatch to the Duke of Newcastle of the 24th April, 1863, declared that his settled conviction was that the Natives were, in the main, right in their allegations regarding the Waitara purchase, and that it ought not to be gone on with. In the memorandum addressed by Sir George Grey to his Ministers on the 22nd April, 1863, he stated his reasons for abandoning the Waitara purchase. The view taken by the Natives of the subject is set forth at length in this memorandum, and we quote the following passages: "It is further to be observed that the Natives declare that they did not take up arms to prohibit the alienation of territory to the Crown, or to maintain any seignorial rights. They rest their justification for entering into the general conspiracy, which was undoubtedly formed throughout the Island, by declaring that it was a struggle for house and home. Especially on the East Coast the Natives have stated this to the Governor. . . . and that the almost

universal belief of the Native race was that a new system of taking lands was to be established, and that if they did not succeed by a general and combined resistance in preventing their houses and lands being taken by the Government from the Natives of the Waitara they would have been each in their turn despoiled in detail of their lands. They refer to the manifesto issued by the Government in February, 1860, declaring the causes of the war against the Native race; and they affirm that the most important statements contained in that manifesto are not correct; . . . and they contend that there was no resort to arms on their part until, from this and other causes, they were convinced that their destruction was determined on, and that their only hope of safety lay in their courage and strength, if an armed force was sent to dispossess them of their homes . . . and they say that until they were sure armed force was intended the survey of the lands claimed by Teira was only interfered with by women, who, without violence, interrupted the surveyors on portions of land which was their own property or that of their husbands. Their general statement with regard to all this is that the people of the Waitara were driven from their homes at the point of the sword; that a great crime had been committed against them; that through all future generations it will be told that their lands were forcibly and unlawfully taken from them by an officer appointed by the Queen of England. . . . The Natives will not agree to any investigation of the title to the land at Waitara alone. They say they do not want that; that a great wrong has been done them, which has entailed great suffering on them, and they ask for an inquiry into the whole affair, in order that it might be shown who is really guilty of the evils which have sprung from the late war."

7. In this memorandum Sir George Grey states certain facts which had been discovered as the result of inquiries made by himself and the Native Minister, Mr. F. D. Bell, on their recent visit to Taranaki. The block of land agreed to be sold by Teira was found to contain about 980 acres. "This block of 980 acres of land now appears," said Sir George Grey, "to have been inhabited, at the time Teira undertook to sell it, by William King and between two hundred and three hundred of his people. They had been in occupation for twelve years; had villages, cultivations, houses and other buildings on it—their homes for years. Teira now states that William King and these people occupied this land under a valid tribal arrangement, which would appear from his statement to be of such a nature that no person could sell the land without William King and these people being consenting parties to the sale. Teira also now admits that there are other legitimate claimants to various portions of this block of land. Teira further states that he had never intended to sell the sites of the Native villages, although these were what the Government especially wanted to form a town-site on the river. Finally, Teira alleges that it was arranged that he was to have a reserve of 200 acres for Native purposes kept on the block of land, and that this reserve has not yet been settled."

8. The Ministers were reluctant to abandon the whole purchase, but left the decision of the question entirely to His Excellency. Sir George Grey decided to abandon the purchase, and published a Proclamation, bearing date the 11th May, 1863, in which, after reciting that circumstances connected with the purchase unknown to the Government at the time of the sale of the land had lately transpired which made it advisable that the purchase should not be further proceeded with, the Governor declared that the purchase of the block of land was abandoned and all claim to the same on the part of the Government was renounced.

9. Unfortunately, however, for the cause of peace, this tardy admission of the justice of Wiremu Kingi's cause had been preceded by the armed occupation of the Tataraimaka Block. That was a block of land distant about twelve miles south-west of New Plymouth, which had been acquired from the Natives and was occupied by settlers when the first Taranaki war broke out. The settlers were driven out during that war, and the Natives now claimed the block by right of conquest. They informed the Governor and General Cameron that the block would not be given up unless the British first gave up the Waitara Block. Notwithstanding this declaration, a force of 300 officers and men marched out on the 4th April, 1863,

encamped on the block, and built a redoubt on it. This march upon Tataraimaka was regarded as a declaration of war, and the Taranaki Natives sent out appeals for assistance to their allies. The first shot in the second Taranaki war was fired on the 4th May, 1863, when a small party of soldiers was ambushed at the mouth of the Wairau Stream, near Oakura, on their way to New Plymouth and all but one man killed. After the issue of the Proclamation of the 11th May, 1863, the troops were withdrawn from the redoubts at Waitara, and at the same time the block-houses which held the intervening Native territory, claimed under Hapurona's treaty of peace, were silently surrendered, and the troops marched back. These acts, which if done a week earlier might have averted war, were regarded by the Native as a sign of weakness. "When Governor Grey heard his men were killed at Oakura," said a chief, "his heart misgave him, and he said, 'Now I must give up Waitara.'"

10. By a Proclamation of the 2nd September, 1865, published in the *New Zealand Gazette* of the 5th September, 1865, the Governor announced to the Natives of New Zealand that the war which commenced at Oakura was at an end. Before this, however, by an Order in Council under the New Zealand Settlements Act, 1863, published in the *New Zealand Gazette* of the 31st January, 1865, the Governor had proclaimed what was called the Middle Taranaki District as a district under that Act. By another Order in Council, made on the 2nd September, 1865, the Governor proclaimed the Ngatiawa and Ngatiruanui Districts as districts under the same Act.

11. The New Zealand Settlements Act, 1863, authorized confiscations in the case only of Natives who had been engaged in rebellion against Her Majesty's authority after the 1st January, 1863. The first Taranaki war, which arose out of the Waitara purchase, had come to an end long before that date. It was contended by Mr. Taylor, on behalf of the Crown, that as the confiscations were made on account of acts of rebellion committed after the 1st January, 1863, and not on account of any acts of rebellion committed during the first Taranaki war, the question of the justice or injustice of the Waitara purchase was entirely irrelevant to the subject-matter of the present inquiry. We are unable to accept this view of the matter. It appears to us that, in considering whether the confiscations were justified or not as punishment for acts of rebellion, it is impossible to ignore the Waitara purchase. It may be the case that an armed conflict between the two races was almost inevitable; but that might have been delayed, or perhaps avoided altogether, if the Waitara purchase had not been made and insisted on. That purchase was the cause of both the Taranaki wars, and was one, at least, of the causes of the Waikato war, and we accept the view of the transaction set forth in the following passage from Shrimpton and Mulgan's "History of New Zealand" (p. 214): "It is most necessary to the understanding of subsequent events to grasp the fact that the Waitara purchase was a blunder, and one of the kind most calculated to poison the Native mind against the white man. The Maori saw immemorial right and custom set aside in what seemed to him a flagrant injustice, and his resentment was strengthened by the strong condemnation of the purchase by Europeans in high places. The transaction has repercussions from Taranaki to the Waikato, and from the Waikato to the East Coast."

12. In connection with the subject of the Waitara purchase it is to be noted that Governor Browne in his despatch to the Duke of Newcastle of the 30th September, 1859, declared that the Europeans coveted the surplus lands of the Maori in the North Island, and were determined to enter into and possess them by fair means or foul. It is to be noted also that Mr. Parris, the Land Purchase Commissioner at New Plymouth, when writing to Bishop Selwyn on the 26th August, 1858, spoke of his (Mr. Parris's) refusal "to support or countenance dishonourable and treacherous treatment of William King and his people to exterminate them from the Waitara, in accordance with Mr. Turton's peremptory plan for the acquirement of that delightful and much-coveted district."

13. The following conclusions appear to be established in connection with the Waitara purchase:—

(*a*) It is clear from the facts ascertained by the Governor and the Native Minister in April, 1863, and without regard to any general question of tribal rights, that

Teira was not entitled to sell the Waitara Block without the consent of Wiremu Kingi and his people. This was acknowledged completely when the purchase was solemnly abandoned by the Governor in his Proclamation of the 11th May, 1863. Mr. Parris, the Land Purchase Commissioner at New Plymouth, had much to do with the purchase from first to last, and it was he who was supposed to have investigated the title to the block. In the circumstances it is difficult to understand how he managed to remain ignorant of the facts in connection with the occupation of the block, which were ascertained without any difficulty by the Governor and the Native Minister in April, 1863.

(*b*) When martial law was proclaimed in Taranaki, and the Natives informed that military operations were about to be undertaken against them, Wiremu Kingi and his people were not in rebellion against the Queen's sovereignty; and when they were driven from the land, their pas destroyed, their houses set fire to, and their cultivations laid waste they were not rebels, and they had not committed any crime.

(*c*) The Natives were treated as rebels and war declared against them before they had engaged in rebellion of any kind, and in the circumstances they had no alternative but to fight in their own self-defence. In their eyes the fight was not against the Queen's sovereignty, but a struggle for house and home.

(*d*) If the abandonment of the Waitara purchase had taken place before the occupation of Tataraimaka, it seems possible that the second Taranaki war would have been avoided. The course which was adopted led the Natives to believe that the Government intended to persist in the great wrong that had been done at Waitara. The armed occupation of Tataraimaka was, in the circumstances, a declaration of war against the Natives, and forced them into the position of rebels. It is to be noted that the Superintendent of the Province of Taranaki had made a recommendation to the Governor and the Native Minister to the effect that the Tataraimaka Block should not be reoccupied until the spring; but this recommendation was disregarded.

14. Both the Taranaki wars ought to be treated, we think, as having arisen out of the Waitara purchase, and judged accordingly. The Government was wrong in declaring war against the Natives for the purpose of establishing the supposed rights of the Crown under that purchase. It was, as Dr. Featherston called it, an unjust and unholy war, and the second war was only a resumption of the original conflict. Although the Natives who took part in the second Taranaki war were engaged in rebellion within the meaning of the New Zealand Settlements Act, 1863, we think that, in the circumstances, they ought not to have been punished by the confiscation of any of their lands.

15. The figures given by Mr. Moverley, of the Land Office, New Plymouth, show that the total area originally confiscated was 1,275,000 acres. Of this, 557,000 acres were purchased from the Natives and paid for by the Government, 256,000 acres were returned to the Natives, thus leaving 462,000 acres as the total area finally confiscated.

16. It is difficult, if not impossible, to arrive at any satisfactory conclusion as to the value of the land at the date of its confiscation, and our recommendation is that the wrong done by the confiscations should be compensated for by making a yearly payment of £5,000, to be applied by a Board for the benefit of the Natives of the tribes whose lands were confiscated.

Waikato Confiscations.

17. We proceed now to consider the confiscations which were made on account of the Waikato war. In dealing with this subject it is necessary to refer shortly to the land leagues and the King movement. The land leagues were formed because the Natives were alarmed by the growing number of the colonists. "They saw their race" said Mr. Reeves ("The Long White Cloud," 3rd ed., p. 197), "becoming the weaker partner. Originating in Taranaki, a league was formed by a number of the tribes against further selling of land. To weld this league together, certain powerful Waikato chiefs determined to have a king. Of them the most celebrated was the son of Hongi's old

antagonist—Te Waharoa. This leader, Wiremu Tamihana, usually known as William Thompson, was an educated Christian and a brown-skinned gentleman, far in advance of his race in breadth of view, logical understanding, and persistence. He honestly wanted to be at peace with us, but, regarding contact with our race as deadly to his own, desired to organize the Maori as a community dwelling apart from the pakeha on ample and carefully secured territories . . . The Waikato chiefs themselves were at odds. After years of argument and speech-making they came to the point of choosing their king . . . They disclaimed hostility to the Queen, but would sell no land and would allow no whites to settle among them, except a few mechanics whose skill they wished to use. They even expelled from their villages white men who had married Maori wives, and who had now to leave their families behind. They would not allow the Queen's writ to run beyond their *aukati* or frontier, or let boats and steamers come up their rivers. Amongst themselves the more violent talked of driving the pakeha into the sea. . . . Thompson, while still open to conciliation, visited Auckland to see the Governor and ask for a small loan to aid his tribe in erecting a flour-mill. Governor Grey would have granted both the interview and the money with a good grace. Governor Browne refused both, and the Waikato chief departed deeply incensed."

18. Governor Browne in his despatch to the Duke of Newcastle of the 9th May, 1857, wrote thus with regard to the King movement: "It was, however, clear that they (the Natives) did not understand the term 'King' in the sense in which we use it; but although they certainly professed loyalty to the Queen, attachment to myself, and a desire for the amalgamation of the races, they did mean to maintain separate nationality, and desired to have a chief of their own election, who should protect them from .every possible encroachment on their own rights and uphold such of their customs as they were disinclined to relinquish."

19. In the year 1860 a Committee of the House of Representatives, known as the Waikato Committee, was appointed to inquire as to an attempt which had been made in the year 1857 to introduce institutions of Civil government amongst the Natives of the Waikato district. In the course of their report the Committee dealt with the King movement, and this is what they said on the subject: "Such a movement need not have been the subject of alarm. One of its principal aims undoubtedly was to assert the distinct nationality of the Maori race, and another to establish by their own efforts some organization on which to base a system of law and order. These objects are not necessarily inconsistent with the recognition of the Queen's supreme authority, or antagonistic to the European race or the progress of colonization."

20. By the Third Article of the Treaty of Waitangi Her Majesty the Queen extended to the Natives of New Zealand her Royal protection, and imparted to them all the rights and privileges of British subjects. If, as Sir John Gorst has said, the Natives had been educated in civilization, and fitted for the enjoyment of these full rights as British subjects which the Treaty promised, nothing would have been heard of land leagues and King movements. But little, if anything, was done for the purpose, and every function of government seemed paralysed except that of purchasing Native land. Governor Browne, in a memorandum dated the 25th May, 1861, said that many districts had never been visited by an officer of the Government, and residents in these districts had never felt that they were subjects of the Queen, and had little reason to think that the Government of the colony cared at all about their welfare.

21. The attempt to introduce institutions of Civil government in the Waikato had been made by the appointment of Mr. Fenton as a Magistrate. He held sittings in the district in the years 1857 and 1858, and was then withdrawn. The principal reason for his withdrawal was a fundamental difference of opinion between him and the Native Secretary as to the proper policy to be pursued by the Government in the district. The opinion of the Waikato Committee was that the course taken of appointing Mr. Fenton was a wise one, and that there were not sufficient reasons for suspending the work in which Mr. Fenton was engaged. "Without in any

degree mitigating the real cause of agitation in the Native mind, his withdrawal," said the Committee, "disheartened a large and influential body of the Natives, especially in the Lower Waikato, including many influential chiefs who had associated themselves with him and were actively engaged on the side of Government. They were disappointed and humiliated at the sudden abandonment of their undertaking. In the Maori phrase, they felt *tinihangatia* ; in plain English, 'humbugged.' Many of them joined the King party, and this, among other causes, has tended to irritate and give a more malign aspect to the King movement itself." The Committee declared their belief also that the only solution of the difficulties lay in meeting, directing, and effectuating the desire of the Natives for the establishment of law and order.

22. "Thus ended," said Sir John Gorst, "the first practical attempt to govern the Maoris. To extinguish Mr. Fenton was no doubt a great triumph for the Native Department, but has since turned out rather a costly one for the British Empire. The abortive measures of the Government made the revolt of the Waikatos much more complete than if nothing had been done at all. . . . As the European Magistrate left the Waikato, Potatau went into it and was duly installed King at Ngaruawahia in April, 1858."

23. A general meeting of the Natives was held at Ngaruawahia in May, 1860, to consider the Taranaki question, and determine whether the Waikatos should join the war or not. The speeches delivered made it clear that the whole body of Waikato was not yet prepared to back Wiremu Kingi's quarrel at all hazards ; but bands of Waikato volunteers proceeded to Taranaki from time to time and took part in the fighting. "Potatau and his councillors," said Sir John Gorst, "did all they could to stop the Waikatos from going, and perhaps may have restrained a few. But most Maoris choose to do exactly what they please, and would equally have gone down to fight at Taranaki whether there had been a Maori king or not. It became the fashion for all the adventurous men to spend a month or two in the year at Taranaki 'shooting pakehas' ; and in obedience to this fashion along they went and took part in the war."

24. Tamihana did his utmost, but in vain, to keep his people from taking any active part in the war. After a time he was induced himself to proceed to Taranaki and to withdraw the Waikatos, which he succeeded in doing, hoping thereby to terminate the strife. Thereupon the Government took advantage of his success to withdraw troops from Taranaki and send them to the Waikato.

25. In June, 1861, there was a large meeting of Natives at Ngaruawahia. The Governor, in anticipation of this meeting, issued what he called a declaration to the Natives assembled at Ngaruawahia. In this declaration, which was dated the 21st May, 1861, the Governor charged the Natives with violating the Treaty of Waitangi by setting up a king, and required unconditional submission, restitution of all plunder, and payment of compensation to the settlers for all losses. It is difficult, as Sir John Gorst said, to exaggerate the effect of this Proclamation on the minds of the Natives, and its influence on subsequent events ; "politically it was a distinct revelation of the thoughts and purposes of the pakeha, and helped to decide that anxious question which was always in their thoughts, when the great war that was to deprive them of their lands would begin." The result of the document was, as Sir William Martin said in November, 1863, to produce an increased bitterness and exasperation. The Proclamation was considered at the meeting at Ngaruawahia, and a reply was sent to it in the form of a letter from Tamihana to the Governor. The Governor regarded this letter as putting an end to doubt and making it clear that war was inevitable.

26. Before war, however, was commenced Governor Browne was recalled, and Sir George Grey was sent back from the Cape to save the position. Sir George Grey arrived in New Zealand on the 26th September, 1861. The Premier (Sir William Fox (then Mr. Fox), submitted to the Governor a minute, dated the 8th October, 1861, setting forth the position of the colony at the date of the arrival of Sir George Grey, chiefly in relation to the Native insurrection. "The attitude," said Sir William Fox, "of the Waikatos is at present one of suspense. They say that they will not give up the King movement, that the appointment of Sir George Grey as Governor will not induce them to succumb ; they must hear what he has to say.

They will remain quiescent. They do not wish to fight, but if they are attacked they will fight to the last man." In another minute of the same date Sir William Fox referred to the amalgamation of the two Departments of Native Secretary and Land Purchase Commissioner by the union, in the person of Mr. McLean, of the two offices of Native Secretary and Chief Land Purchase Commissioner. "A prominent result," said Sir William Fox, "of this union of the political function of the Government with its commercial function as land-purchaser has been the creation in the Native mind of a suspicion that all the acts of the Government originate in a desire to get possession of their land. They have learned to look upon the Government as a gigantic landbroker, and every attempt made by it either to improve their social condition or to control them by the necessary restriction of law is supposed to have for its ultimate object the acquisition of territory. This feeling to a great extent lies at the foundation of the unsatisfactory relations at present existing between the Natives and the Government."

27. In his memorandum of the 20th June, 1863, Mr. James Fulloon stated what he understood to be the course proposed to be adopted by the Natives in the event of war taking place. "Shortly after the cessation of hostilities at Taranaki in 1861 the Waikatos," he said, "organized a plan of operations, in the event of a misunderstanding arising with the Government, as they fully believed at the time that the Government was going to press them for the part that they had taken in the Taranaki war, and also against the King movement." Mr. Fulloon then gives the details of the plan, which included attacks on the settlers in the Drury and Papakura districts, and on the settlers at Patumahoe and Waiuku. That was the first plan. It was altered afterwards to an attack on Auckland. The city was to be set on fire by some Natives at different points, and while the citizens were extinguishing the conflagration an assault was to be made on the city both by sea and land. The attack was not to have been confined to Auckland alone, and was to have taken place simultaneously all over the Island. It was intended to have been a general war against the pakeha, commencing on the 1st September, 1861, and was only averted by the news that Sir George Grey was coming to New Zealand as Governor. "By what I have been able to ascertain," said Mr. Fulloon, "the plan Waikato intends to follow out now is the one that I have first described." "Nothing but the firm opposition of Wi Tamihana and others to this design," said Sir John Gorst, "prevented its execution in May or the beginning of June, when the bulk of the troops were engaged at Taranaki, and Auckland lay comparatively defenceless."

28. The other events preceding the war are thus summarized by Mr. Reeves ("The Long White Cloud," p. 205): "For eighteen months Grey and his Premier laboured for peace. They tried to conciliate the Kingite chiefs, who would not, for a long time, meet the Governor. They withdrew Governor Browne's manifesto. They offered the Natives local self-government. . . . In the Waikato relations with the King's tribes were drifting from bad to worse. Grey had been called in too late. His mana was no longer the influence it had been ten years before. His diplomatic advances and offers of local government were met with sheer sulkiness. The semi-comic incident of Sir John Gorst's newspaper skirmish at Te Awamutu did no good. . . . The Government pushed on a military road from Auckland to the Waikato frontier—a doubtful piece of policy, as it irritated the Natives, and the Waikato country, as experience afterwards showed, could best be invaded with the help of river-steamers. About the same time as the Gorst incident in the Upper Waikato, the Government tried to build a police-station and barracks on a plot of ground belonging to a friendly Native lower down the river. The King Natives, however, forbade the erection, and when the work went on a party of them paddled down, seized the materials, and threw them into the stream. It was now clear that war was coming. The utmost anxiety prevailed in Auckland, which was only forty miles from the frontier, and exposed to attack from both sea and land. . . . The choice of the Government lay between attacking and being attacked. They learned, beyond a doubt, that the Waikatos were planning a march on Auckland, and in a letter written by Thompson about this time he stated this, and said that in the event of an assault the unarmed people would not be spared. By the middle of the year 1863, however, a strong force was concentrated on the

border. . . . In July the invasion of the Waikato was ordered. On the very day before our men advanced, the Maori had begun what they meant to be their march to Auckland, and the two forces at once came into collision. In a sharp fight at Koheroa the Natives were driven from their entrenchments with some loss, and any forward movement on their part was effectually stopped." General Cameron crossed the Maungatawhiri Stream on the 12th July, 1863, and the fight at Koheroa took place on the 17th July. It is not necessary to give the history of the war, in which the capture of Orakau in April, 1864, was the final and decisive blow.

29. The first step in the way of confiscation was taken when the Governor by his Proclamation of the 17th December, 1864, declared his intention to retain and hold as land of the Crown all the land in the Waikato taken by the Queen's Forces within certain specified boundaries. This Proclamation did not purport to be made under the New Zealand Settlements Act, 1863. By an Order in Council made under that Act on the 30th January, 1865, the East Wairoa and West Pukekohe Blocks were declared to be districts under the Act, and were reserved and set apart as sites for settlement and colonization. By another Order in Council, made on the 16th May, 1865, a district called the Central Waikato District was declared to be a district under the Act. By another Order in Council, made on the same day, certain parts of this district were set apart as sites for settlement and colonization. By another Order in Council, made on the same day, the Mangare, Pukaki, Ihumata, and Kerikeri Blocks were declared to be districts under the Act. By another Order in Council, made on the 2nd September, 1865, an addition was made to the Central Waikato District as already proclaimed.

30. It is clear that the tribes whose lands were included in those Proclamations had been engaged after the 1st January, 1863, in rebellion against Her Majesty's authority. They were rebels, therefore, within the meaning of the New Zealand Settlements Act, 1863, and their land was liable to be confiscated. The first question is whether or not the circumstances were such as to justify us in saying that in good conscience and equity the Natives, although rebels, ought not to have suffered any confiscation of their land. It is true, certainly, that the Government did afford them some excuse for their resort to arms. For them the Government had become a gigantic landbroker, whose sole object, however disguised, was the acquisition of their territory, regardless of their rights under the Treaty of Waitangi. They knew that the first Taranaki war was an unjust and unholy war, and this view of it was completely established when the Waitara purchase was abandoned by the Government. Sir William Martin, in his memorandum of the 16th November, 1863, said that a deliberate review of the whole connection between the two races forced him to believe that the Natives had not fallen short of their part in the original contract more than we had of ours; that they had not, as a nation, sinned more against us then we, the superior and protecting power, had against them. If in the circumstances the Natives had contented themselves with providing for their own defence when attacked, with providing also for the establishment of law and order in their midst, and for the regulation of sales of Native land, they might have been declared to be blameless. But they were not content to do that, and formed a plan for the destruction of Auckland and the slaughter of its inhabitants. This was to be part of a general attack in the North Island, and a party of Natives had actually set out on the march north to attack the pakehas before General Cameron had crossed the Maungatawhiri Stream. In view of these facts and of the other matters already mentioned, we are not justified, we think, in saying that the tribes who took part in the Waikato war ought not to have suffered some confiscation of their lands as a penalty for the part they took in the rebellion.

31. The next question to be considered, then, is whether or not, having regard to all the circumstances, these confiscations exceeded what was fair and just, whether as penalty for rebellion and other acts of that nature, or as providing for protection by settlement as defined in the Acts. Before dealing with this specific question it will be convenient to consider the argument advanced by Mr. Smith as to the construction of the New Zealand Settlements Act, 1863. That Act, he contended, authorized only the taking of land actually required for military settlement. To secure land for military settlements in disaffected districts was, no doubt, one of the

main purposes of the Act; but it is impossible, we think, to limit its operation to that one purpose. Section 3 authorized the Governor to set apart in any proclaimed district eligible sites for settlements by colonization, and this power was not limited in terms to colonization by any particular class of settlers. Section 16 provided for laying-out of towns and farms to give effect to the contracts for the granting of land for military services. Section 17 provided that, after setting apart sufficient land for all the persons entitled thereto under the said contracts, it should be lawful for the Governor in Council to cause towns to be surveyed and laid out, and also suburban and rural allotments. This section, read with section 3, makes it clear that the scope of the Act was not limited in the way suggested by Mr. Smith, and that the Governor had power to set apart lands in the district for occupation by other than military settlers.

32. There was considerable discussion between the Governor and his Ministers before the confiscations were finally settled. In their memorandum of the 19th November, 1864, the Ministers criticized the Governor's first plan of proposed confiscation. They pointed out that the chiefs of Waitako who had been principally engaged in the rebellion were the Nagtimaniapotos, under Rewi, and the Ngatihaua, Ngatimehutia, &c., residing mainly in the southern portions of Waikato; yet not an acre of their country was proposed to be taken. "His Excellency," said the Ministers, "reverses the instructions of Mr. Cardwell and the dictates of natural justice, and would punish much those who are not guilty, and leave unpunished those who are guilty in the highest degree." This plan was afterwards modified, but the confiscation as finally effected did allow the Ngatimaniapotos to escape without any loss of territory, and made the Waikatos the chief sufferers.

33. Part of the confiscated lands included the Mangere Block, containing about 1,300 acres; the Ihumatu Block, containing 1,100 acres; and the Pukaki Block, containing about 1,300 acres. The history of the Natives occupying these blocks is given by Sir John Gorst in his book, "The Maori King," and we quote the following passages from it: "There were several Maori villages near Auckland —viz., Mangere, Pukaki, Ihumatao, and others—inhabited by relations of the Waikato tribes. A large proportion of these people were old and infirm . . . Yet our arrangements for governing Native settlements, even close to our own doors, were so defective that the instant war broke out we found it dangerous, though we had ten thousand men in the field, to allow these poor creatures to remain in their homes. Twenty Maori policemen could have quelled the whole of them even if in actual revolt, but the Government had not a single Maori policeman upon whose obedience they could depend. It was therefore resolved to drive these poor men and women from their homes and confiscate their lands. There was no difficulty in finding a pretext. They were Maoris, and relatives of Potatau. Underlings of the Native Office were despatched in haste to call upon them to give up their weapons and take the oath of allegiance to the Queen, or, in default, to retire beyond Maungatawhiri under pain of ejection. The first Native to whom this cruel decree was made known was Tamati Ngapora, the uncle of the Maori King. . . . Tamati and the other Mangere Natives quite understood the alternatives. They must submit to what they regarded as an ignominious test, or lose the whole of their property. And yet, to their honour be it said, they did not hesitate for a moment. They all thanked the pakeha for this last act of kindness in giving them timely warning of the evil that was to come upon Waikato, and an opportunity of themselves escaping; but they could not forget that they were part of the Waikato, and they must go and die with their fathers and friends. . . . The same answer was returned at Pukaki and Ihumatao. Only one or two at each place accepted the test and stayed behind. The fugitives were, of course, unable to carry all their goods with them. What remained behind was looted by the colonial forces and the neighbouring settlers. Canoes were broken to pieces and burnt, cattle seized, houses ransacked, and horses brought to Auckland and sold by the spoilers in the public market. Such robbery was, of course, unsanctioned by the Government, but the authorities were unable to check the greediness of the settlers." Sir John Gorst then describes how two of the chiefs, Ihaka and Mohi, with their women, children, and young men, took refuge at a small Native village called Kirikiri, and stopped there.

The Government, said Sir John Gorst, were at this time becoming rather ashamed of having inflicted so much suffering on these innocent old people, and wished to get them away to the Waikato with all possible speed and humanity. Mr. F. D. Bell, the Colonial Minister for Native Affairs, was therefore specially sent out by Sir George Grey to visit Kirikiri and ascertain the real state of affairs, to supply the Natives with food, if needed, and to make the best arrangement he could for getting them away from their dangerous vicinity to the outlying European villages. Mr. Bell, accompanied by Mr. Gorst, visited Kirikiri and interviewed the Natives. A long account is given of the interview, but it is not necessary to quote it. This interview was on the 13th July, 1863, the day after the Maungatawhiri was crossed by General Cameron. "At ten o'clock that night," continues Sir John Gorst, "a telegraphic despatch was received at Drury from the Governor, ordering the troops to take the whole of the party at Kirikiri prisoners. A detachment was accordingly told off, who marched to the village, captured Ihaka, the sick chief, and all the infirm men, with the women and children; and in some manner, never accounted for, allowed Mohi, the sound chief, with all his able-bodied followers, to slip through their fingers. Mohi, thus relieved of his encumbrances and of all ground for forbearance, immediately commenced hostilities."

34. The accuracy of Sir John Gorst's account of the transaction has not been questioned in any way. If it be accepted as correct, as we think it ought to be, then it is clear that a grave injustice was done to the Natives in question by forcing them into the position of rebels, and afterwards confiscating their lands. In the circumstances only a nominal confiscation, if any, should have been made. Of the 1,300 acres confiscated at Mangere, 1,205 acres were restored to the Natives, leaving an area of 95 acres as finally confiscated. Of the 1,100 acres confiscated at Ihumatu, 260 acres were restored to the Natives, leaving an area of 840 acres as finally confiscated. Of the 1,300 acres confiscated at Pukaki, 270 acres were restored to the Natives, leaving an area of 1,030 acres as finally confiscated.

35. Returning to the subject of the general confiscation, we find from the statement prepared by Mr. Darby, of the Lands Department at Auckland, that the total area originally confiscated was 1,202,172 acres. Of this an area of 314,364 acres has been returned to the Natives, leaving a balance of 887,808 acres as finally confiscated. From this has to be deducted an area of 13,947 acres now being inquired into by the Native Land Court under the authority of section 6 of the Native Land Amendment and Native Claims Adjustment Act, 1922. A further deduction would have to be made also to represent the sum of £22,987 which has been paid to the Natives as compensation. Mr. Smith, in the course of his argument, stated the position on a monetary basis, taking the land as being worth 10s. per acre. That gave £420,917 as the value of the land which has been finally confiscated, subject to a deduction in respect of the 13,947 acres still before the Native Land Court as already mentioned. Mr. Smith contended that there should not have been any confiscation in the Waikato at all. We are unable, as we have said, to accept that view of the matter, but we think that, in view of all the circumstances to which we have referred, the confiscation was excessive, and particularly so in the case of the Mangere, Ihumatu, and Pukaki Natives. Mr. Smith suggested that, if any confiscation was justified, it should have been limited to the land required for military settlement. This, on the monetary basis already suggested, would mean a deduction of £62,251 from the £420,917, leaving a balance of £358,666, according to Mr. Smith's contention, as the value of the land unjustly confiscated.

36. We are not prepared to accept this as the basis on which the confiscations should be judged, and our recommendation is that the excessive confiscation should be compensated for by making a yearly payment of £3,000, to be applied by a Board for the benefit of the Natives of the tribes whose lands were confiscated.

Tauranga Confiscations.

37. We have to consider now the Tauranga confiscations. Before, however, doing that, it is necessary to deal with the claim made by Hautapu Wharehira and

twenty-three other petitioners on behalf of the Waitaha Tribe, a subtribe of the Arawa Tribe. The claim made by the petitioners in the petition (No. 20 in the schedule) presented by them to the House of Representatives in the year 1923 was that the Waitaha Tribe was entitled to 22,300 acres of the confiscated land. When, however, Mr. Wihapi presented the case for the petitioners before us the claim he made on their behalf was not merely for 22,300 acres, but for the whole area of 290,000 acres confiscated by the Proclamation of the 18th May, 1865. The claim of the Waitaha Tribe to the 22,300 acres appears to have been made for the first time in the year 1923, when the petition already mentioned was presented to the House of Representatives. Before that date, however, a claim was made to a smaller area of about 5,000 acres, and that claim was dealt with by Mr. Clarke, the Civil Commissioner, in 1878. There was also a claim made by the Arawa Tribe to the island of Motiti in Tauranga Harbour, but this claim was disputed by the Ngaiterangi. Until the year 1923 every one acted on the view that practically the whole of the confiscated land belonged to the Ngaiterangi Tribe. The Proclamation refers to it as their land, and Acts of Parliament were passed and settlements were made with Natives on this basis. The chiefs of the Waitaha Tribe must have known this, and allowed all these things to be done without protest and without a word about any further claim than that put forward in 1878. The fact that the area claimed grew from 22,300 acres to 290,000 acres between 1923 and 1927 makes it difficult to regard the claim seriously. According to the award of Messrs. Clarke and Mackay, made in December, 1864, on which Mr. Wihapi relied, Ranginui and Waitaha were the original owners of the Tauranga district, which was afterwards conquered and occupied by the Ngaiterangi Tribe. The claim made by the Waitaha, which came before Mr. Clarke, in 1878 was for an area which, on survey, was found to contain 4,947 acres. If the Ngaiterangi were not the owners of the rest of the land, why did the Waitaha tribe not say so, and assert their claim to all the land when the confiscation took place in 1865? Their silence from 1865 to 1923 is in itself strong evidence that the claim now made is without any merit. But even if the claim had any merit originally, this long silence is a ground for applying the doctrine of estoppel, and for saying that the Waitaha Tribe, having stood by while the land was dealt with as the property of the Ngatirangi Tribe, is precluded now from making any claim to the land.

38. The principal reason for the compaign against the Tauranga Natives in 1864 was the fact that they had taken part in the Waikato war. The compaign, which ended with the fight at Te Ranga on the 21st June, 1864, was followed by the submission of the Tauranga tribes. "The friendliest relations," said Mr. Cowan, "were established between the fighters of the two races, who esteemed each other for the courage and the humanity which had distinguished the whole conduct of the brief campaign."

39. The Governor met the Natives at Tauranga on the 5th and 6th August, 1864. What happened at this meeting is thus described by Mr. Clarke in his letter of the 23rd June, 1865, to the Hon. Mr. Mantell: "When the Natives made their surrender to His Excellency the Governor, the Ngaiterangi gave up all their lands into the hands of His Excellency. The friendly Natives were parties to this arrangement. . . . Before the Governor declared the terms upon which he would accept the surrender of the Ngaiterangi, I was instructed by the late Ministers, Messrs. Whitaker and Fox, to meet the Natives and try to induce them to give up some specific block of land, but so many difficulties presented themselves, chiefly amongst themselves, that they abandoned the idea and adhered to their first determination of giving up all their lands. His Excellency the Governor in his reply to the Ngaiterangi told them that he would return to them three-fourths of their land, retaining the remainder as a punishment for their rebellion. The Natives all expressed satisfaction at the liberality of the Governor."

40. The Order in Council under the New Zealand Settlements Act, 1863, was made on the 18th May, 1865. By that the Governor declared the lands of the Ngaiterangi Tribe described in the schedule to be a district under the Act, and to be set apart and reserved as sites for settlements and colonization. The Governor also ordered "that, in accordance with the promise made by his Excellency the Governor at Tauranga, on the 6th day of August, 1864, three-fourths in quantity

of the said lands shall be set apart for such persons of the tribe Ngaiterangi as shall be determined by the Governor after due inquiry shall have been made."

41. Doubts were raised as to the validity of the Order in Council and as to the arrangements made with the Natives. These doubts were removed by the Tauranga District Lands Act, 1867, which validated the Order in Council and everything done under it. In the following year the Tauranga District Lands Act, 1868, was passed to amend the Act of 1867 and the Order in Council so as to make them include the whole of the land of the Ngaiterangi Tribe.

42. The area confiscated was described in the Order in Council and the two Acts of Parliament as being estimated to contain 214,000 acres. It contained in fact 290,000 acres. Of this area the Katikati and Te Puna Blocks, containing 93,188 acres, were purchased and paid for by the Government. Other blocks were restored to the Natives, and the total area restored to them or bought from them was 240,250 acres, leaving 49,750 acres as the balance of land finally confiscated.

43. It is clear that the Tauranga Natives were engaged in rebellion against Her Majesty's authority after the 1st January, 1863, and their case came, therefore, within the terms of the New Zealand Settlements Act, 1863. This was admitted by the Natives at the meeting with the Governor on the 5th and 6th August, 1864, and they really agreed then with the Governor as to the total area to be confiscated as a penalty for their rebellion. In his letter of the 31st July, 1867, Mr. Mackay, the Civil Commissioner, said that the whole tribe, loyal and ex-rebel, joined in the settlement of this question. Mr. Smith did not contend seriously that confiscation was not justified, or that in the circumstances the area finally confiscated was excessive. His main contention was, first, that as to the 50,000 acres confiscated the loyal Natives, who had ancestral rights therein, were entitled to those rights or their equivalent; and, secondly, that as to the remainder of the land both the loyalists and rebels were entitled to their full share therein as if the land had not been confiscated. Mr. Smith suggested that there should be an inquiry by the Native Land Court as to both these matters. Before such an inquiry can be recommended a *prima facie* case of injustice at least must be established, and it must be reasonably certain that, if injustice has been done, the facts can be ascertained and the sufferers compensated. Mr. Smith did not attempt to prove a *prima facie* case of injustice in any of the arrangements and settlements that were made in connection with the confiscated land, and confined himself to suggesting that the purchase of the Katikati and Te Puna Blocks was made at an under-value.

44. If an inquiry such as that suggested were directed to be made, it would mean that, in the first place, the Court would have to ascertain who of the Natives concerned were loyal. That would be a difficult thing to do after the lapse of more than sixty years. It would be necessary also to go into all the arrangements and settlements that were made, and ascertain exactly what each Native, whether loyalist or rebel, obtained in the shape of land or money. It is obviously impossible to ascertain this now, and unless accurate information can be obtained on this subject, and as to the interests of the different claimants, it is impossible to say whether or not any injustice has been done.

45. Mr. Mackay's letter of the 31st July, 1867, to the Under-Secretary of the Native Department shows what was done in the way of settling claims. The following are passages from that letter: "Out of the lands reserved or returned to loyal Natives within the military settlements block of 50,000 acres, I would observe that these were at first to be more in the light of gifts from the Crown to the Natives on account of having lost land than as compensation. It is true that since the extension of the area of these to 6,000 acres by Mr. Clarke and myself we and the Natives now look on it as compensation. The intention of the Governor, in the first instance, was evidently that the question of compensation to loyal Natives should be adjusted out of the three-fourths of the whole district to be returned to the tribe, and not out of the one-fourth retained by him. . . The fact of the Natives having sold to the Crown the Katikati and Puna Blocks to a certain extent altered the position of the case. However, in arranging this question Mr. Clarke and myself endeavoured to adjust any outstanding claims by making reserves for some of the

loyal persons who had received but little before, on account of their lands being within the military settlement block of 50,000 acres, although they had but very small right to land otherwise within the Katikati and Puna Blocks. We also proposed to the ex-rebel party who owned the greater part of the purchased blocks that they should adjust the matter by giving a large share of the consideration-money to the loyal claimants. Neither party, however, cared much for this proposition, and it was negatived at the time by then, though I believe that in the apportionment of the £3,000 instalment recently paid to them they behaved liberally to the loyal claimants." Mr. Mackay continued by saying that all claims received by him for land taken at Tauranga had been settled, with one exception. Later in the letter he said that he held a meeting of the tribe on the 15th July, 1867. The meeting lasted two days, and was attended by loyal and ex-rebel Natives. There was a question as to the abandonment by the Government of two islands in Tauranga Harbour. The meeting was convened, said Mr. Mackay, in order to test the views of the Ngaiterangi Tribe on this subject, "and also to ascertain whether any further claims for compensation were likely to be made by the loyal portion of the people for any of their lands taken within the military settlements block." Mr. Mackay does not say whether or not he received any further claims, but, in view of his earlier statement that he had settled all claims received, it is reasonable to conclude that he did not receive any further claims at or shortly after this meeting.

46. In the year 1886 Mr. Brabant compiled a return showing how the titles to the lands returned to the Ngaiterangi Tribe under the Acts of 1867 and 1868 had been dealt with by the Commissioners appointed under those Acts. That shows that 210 blocks, with a gross area of 136,191 acres, had been dealt with in this way. These figures, as Mr. Brabant pointed out, are exclusive "of the large Katikati-Te Puna Government purchase, of the compensation awards to loyal Natives, and of the reserves made for surrendered rebels and of the actually confiscated block."

47. It seems clear from Mr. Mackay's letter that the claims of both loyal Natives and rebels were duly considered at the time, and an endeavour made to do justice to them all. It is not suggested that any complaint was made on the subject at the time, or, indeed, until quite recently, and in these circumstances it is reasonable to conclude that substantial justice was done to the Natives by the settlements made by the Government. We think, therefore, that the confiscation was justified and was not excessive, and that the Natives have not made out any case for the inquiry asked for by them.

Bay of Plenty Confiscations.

48. These confiscations were the outcome of events which followed the murder of the Rev. C. Volkner at Opotiki on the 2nd March, 1865, and the murder of James Fulloon at Whakatane on the 21st July, 1865.

49. It is true, as pointed out by Mr. Taylor, that of the tribes affected by these confiscations the Tuhoe Tribe took part in the Waikato war in 1863 and assisted in the defence of Orakau. It is true also that the Whakatohea, Ngatiawa, Ngatipokeko, and Ngatirangihouriri Tribes all sent men to join the army raised in 1864 to assist the Waikatos, which was defeated by the Arawas in April, 1864, near Lake Rotoiti. These were acts of rebellion which would have justified confiscation under the New Zealand Settlements Act, 1863; but they were forgiven by the Proclamation of the 2nd September, 1865, which declared that the war which commenced at Oakura was at an end and that the Governor would not take any more land on account of that war.

50. The murder of Mr. Volkner and the murder of Mr. Fulloon were not in themselves acts of rebellion, and if the Natives of Opotiki and Whakatane had not resisted the armed forces sent to capture the murderers there would not have been any excuse for confiscating their lands. By the Proclamation of the 4th September, 1865, published in the same *Gazette* as the Proclamation of peace, the Governor, after reciting that a military force had been employed to capture the murderers of the Rev. Mr. Volkner and of Mr. James Fulloon and his companions, proclaimed that martial law would be exercised throughout the districts of Opotiki and Whakatane.

51. The force of about five hundred men sent in transports under Major Brassey to Opotiki arrived there on the 8th September. The landing was opposed by the Natives, and, after a landing was effected, there was the fighting which is described by Mr. Cowan in the second volume of his "History of the New Zealand Wars" (Chapter x). The Hauhau hapus of the Whakatohea fortified themselves, said Mr. Cowan, between four and five miles up the valley. The entrenchment consisted of three redoubts, and these were captured ultimately after a strenuous resistance by the Natives. Intermittent skirmishing continued in the district until November, 1865. This was followed by the surrender of a number of Hauhaus, including the chief Mokomoko, who was concerned in the murder of Mr. Volkner.

52. The force of Arawas sent out to capture the murderers of Fulloon was under the command of Major Mair. There was fighting between this force and the Natives of the Whakatane district, and the story of the fighting is told by Mr. Cowan in the second volume of his "History of the New Zealand Wars" (Chapter ix). The Hauhaus were driven ultimately to their fortified pa at Te Teko. This was besieged, and on the 20th October the garrison surrendered. About twenty of the principal offenders in the murder of Fulloon were captured.

53. On the 17th January, 1866, an Order in Council was made declaring the district described in the schedule to be a district under the New Zealand Settlements Act, 1863, and reserving and taking it for the purpose of settlements. The boundaries of the district were altered by an Order in Council made on the 1st September, 1866.

54. It is clear that the Natives of Opotiki and Whakatane were engaged in rebellion against Her Majesty's authority when they resisted with arms the advance of the forces sent out to capture the murderers. Their cases came, therefore, within the terms of the New Zealand Settlements Act, 1863, and the Governor was justified in confiscating their lands as a penalty for their rebellion.

55. It has been said, however, that a few only of the twenty hapus of the Ngatiawa Tribe took part in the rebellion while the others remained loyal or neutral. It was claimed that in these circumstances the effect of the confiscation was to punish the innocent as well as the guilty. It is probable that some of the hapus were loyal, but it is impossible at this distance of time to determine exactly the hapus concerned in the rebellion or to ascertain their respective interests in the land confiscated. It would be idle to attempt to discriminate now as to the complicity of the different hapus, and all that we can say is that it has not been proved to our satisfaction that the land of any innocent hapu has been confiscated. If any such land was confiscated, the hapu was entitled to compensation for it under the New Zealand Settlements Act, 1863.

56. The next question to be considered is whether or not the Bay of Plenty confiscations exceeded what was fair and just. The total area included in the proclaimed district was 448,000 acres. Of this, 118,300 acres were restored to loyal Natives and 112,300 acres to rebel Natives. There was an area of 6,340 acres which had been sold privately before the confiscation, so that the area finally confiscated was 211,060 acres. The territory confiscated included an area of 87,000 acres which was claimed by the Arawas, and was ceded to them. This claim was disputed by the Ngatiawas, who said that this area belonged to them. If the area be treated as belonging to the Arawas, the Ngatiawa had originally 107,120 acres, and were left with 50,321 acres, which was increased by grants to 77,870 acres. The Whakatoheas had originally 491,000 acres, and were left with 347,130 acres. The Tuhoes had originally 1,249,280 acres, and were left with 1,234,549 acres. These figures are based on the tribal boundaries as given on what is known as Heaphy's plan. There is some dispute as to the correctness of the boundaries as shown on this plan.

57. The Whakatohea Tribe have in their favour the report of the Commission which sat in the year 1920. The concluding sentences of the report are these: "We have not sufficient material before us to say what would have been a fair and just area to confiscate, nor do we think it wise for us to go into that question. We have no hesitation, however, in affirming that, judged by the light of subsequent events, the penalty paid by the Whakatohea, great as was their offence, was heavier than their deserts."

58. We have considered the matter carefully, and we think that, except in the case of the Whakatohea Tribe, the confiscations in the Bay of Plenty did not exceed what was fair and just. In the case of the Whakatohea Tribe it was excessive, we think, but only to a small extent, and we recommend that a yearly sum of £300 should be paid for the purpose of providing higher education for the children of members of that tribe.

QUESTION No. 2.

59. The second question to be inquired into is this: "Whether any lands included in any confiscation were of such a nature as that they should have been excluded for some special reason."

60. It was claimed that a large number of places should have been excluded, for special reasons, from the confiscated areas. One witness suggested that Mount Egmont should have been excluded, and claimed to have it made a special reserve for himself and his people. We were supplied with a long list of the places claimed in the Taranaki District, and also lists of places claimed in other districts. The Taranaki list includes five canoe-landing places, forty-five cemeteries, fifteen river and lake fishing reserves, twenty-six pas, sixty-four lamprey and eel weirs, and two pipi and mussel beds. It would be difficult, we think, to ascertain now the exact locality of many of these places. It is certain that few of them could be restored to the Natives, and that in most cases the Natives would not want them if they could get them. What, for example, would be the use of a canoe-landing-place to Natives who have not got any canoes, and who travel now in motor-cars.

61. With regard to cemeteries, the practice of the Government, Mr. Taylor said, had always been to exclude these from land offered for sale, when they were pointed out to the surveyors. That has not been done in a number of cases, and burial-places have been included in land sold to Europeans.

62. When the confiscations were made it was impossible, of course, to go into the question of excluding particular places from the area to be confiscated. They could have been dealt with afterwards when parts of the confiscated areas were being restored to the Natives. It is clear that any general attempt to restore these places now is quite out of the question. Provision is made by section 13 of the Native Land Amendment and Native Land Claims Adjustment Act, 1924, for the restoration to Natives of cemeteries on Crown land, and cases of the kind are dealt with from time to time, we understand, under this section. The practice of dealing with them under this section will continue no doubt.

QUESTION No. 3.

63. This question, as we understand it, is intended to deal with the case of Natives, belonging to a tribe or hapu whose land was properly confiscated, who, for reasons personal to themselves, did not deserve to share in the punishment thus inflicted. Our answer is that such a case was not put forward on behalf of any Native.

QUESTION No. 4.

64. This question directs an inquiry as to the provisions made for the support and maintenance of Natives excluded by section 5 of the New Zealand Settlements Act, 1863, from any right to compensation, and the inquiry is as to the provision made for each particular tribe or hapu.

65. Petition No. 7 (Bay of Plenty District) is a case of this kind, and we refer to what is said in this report on the subject of that petition. It was the only case of the kind that was brought before us, except that, in the course of this argument in connection with the Tauranga confiscations Mr. Smith claimed that certain of the rebel Natives were not given sufficient lands for their support. In connection with this claim a list of names was submitted, with a list of blocks awarded to certain members of the Pirirakau hapu, but the claim was not supported by any further evidence. The petitioners in petition No. 22 (Arawa District) claim to be descendants of loyal Natives, and allege that they are landless. We refer to what is said in this report on the subject of that petition, and of petition No. 23 (Arawa District).

Bay of Plenty District.

Petitions Nos. 1, 2, 3, 6, and 8.

66. These all deal with the general question of the Bay of Plenty confiscations, and are covered by what has been said already on that subject.

Petition No. 4.

67. The petitioners are members of the Ngamaihi, a hapu of the Ngati-Awa. They assert that owing to the confiscations they were left landless, and that a piece of land known as Lot 72, Parish of Matata, to which they were entitled in accordance with Native custom, was awarded instead to another hapu, known as the Pahipotos.

68. During the hearing of this petition it was ascertained that an award had been made to this hapu in conjunction with the Pahipotos of Section 59 (Mount Edgecumbe), containing 12,710 acres. They assert, however, that on definition of relative interests, which was effected in accordance with Native custom, the Pahipotos were able to prove greater rights and got the major share, and all that was awarded to them was about 4,000 acres. They further asserted that another block, Section 72, Matata, to which they could prove ancestral rights, was awarded to the Pahipotos only. A perusal of the report made by Mr. Wilson, the Government Agent, in March, 1872, discloses the fact that Section 72 was awarded to the Pahipotos as claimants, a right which loyalists were allowed by the Act. The Ngamaihis, therefore, either did not then claim inclusion, or, if they did so, were excluded for some reason. The award of Lot 59, in which both hapus were included, was made under the 3rd and 4th section of the Confiscated Lands Act, which empowered the Commissioner or other official acting to make awards to rebels. As the award to the Pahipotos for Lot 72 appears to be a loyalist award, the reason for the award for Lot 59 being made under the 3rd and 4th section of the Act above mentioned can only be explained by the fact that rebels had been included. We assume, therefore, that the Ngamaihi were treated under that award as rebels.

69. It appears, however, that practically all of the hapus of the Ngati-Awa (Fulloon's hapu included) were treated for the purpose of these awards as rebels. That may be explained by the fact that the majority of the Ngati-Awa were indifferent to Government action, preferring evidently to await the result of the representations which their chief, Wepiha, proposed to make to Parliament in connection with all their lands. This undoubtedly would induce them not to enter claims for specified areas, but it is strange that no attempt was made soon after the true position was ascertained by them to assert their rights.

70. We do consider, however, that the award in Lot 59 was strictly a compensation award, having no cognizance of ancestral "takes," and consequently the definition of relative interests should not be based on rights by ancestry, but should be divided equally among the individual owners. On referring to the Native Land Court records we find that this was the basis suggested by the Court, but that the owners took it upon themselves to arrange the shares. This arrangement, at the wish of the Natives, was confirmed by the Court. We therefore have no recommendation to make.

Petition No. 5.

71. The petitioner asserts that he is a descendant of Rewiri Manuariki, a loyal member of the Ngamaihi hapu, and also of the Ngati-Pikiao hapu of Te Arawa, and that the Ngamaihi lands of this chief were confiscated notwithstanding his loyalty. He prays for the return of these lands, known as the Ahikokoa Block, on the west bank of the Tarawera River. The assertions made by the petitioner were not seriously disputed by the Crown, and, if true, an injustice has been done to him. It is strange, however, that Rewiri Manuariki did not assert this right before Mr. Wilson when the claims were being heard. This is significant in view of the fact that the names of himself and members of his family appear in the list of names for Lot 63, Parish of Matata, which was awarded to his tribe,

Ngati-Pikiao, for military services, and in view also of the fact that Rewiri Manuariki took a very prominent part in assisting to arrest the murderers of Fulloon.

In view of these circumstances we have no recommendation to make.

Petition No. 7.

72. This is a petition by Ngati-Rangihouhiri and Ngati-Hikakino, hapus of Ngati-Awa, praying for a grant of land in the Whakatane District. They allege, that, with the exception of a small area, the whole of their lands were taken under the confiscations, that the bulk of what was left to them was subsequently taken under the Public Works Act for the Rangitaiki drainage scheme, and that, although they were paid compensation, the result was that were left dependent upon other tribes for suitable lands to sustain themselves.

73. These hapus were directly implicated in the murder of Fulloon, and later in resisting the arrest of the murderers. They were the tribes who accepted Hauhauism when it was first introduced into the Whakatane District, their head-quarters then being Matata. A considerable area of their tribal lands was confiscated and awarded to hapus of the Arawa.

74. The land returned to these hapus is estimated as approximately 278 acres, together with very small shares in common with other Natives in Lot 28 and 31, Rangitaiki. Of the 278 acres, 187 acres were taken under the Public Works Act, leaving them an area of slightly over 100 acres, the bulk of which, according to the evidence submitted, is sandy and poor in quality. The number of members of these hapus at the present has been estimated to be 60.

75. We think that, owing to the confiscations, these hapus have not sufficient reserves for their ordinary maintenance, and recommend that some land in the locality of Matata be given to them, and that in fixing the relative interests of each individual his interest in other blocks be taken into account.

HAWKE'S BAY DISTRICT.

Petitions Nos. 9, 10, 11, 12, 13.

76. These petitions were conducted separately before us by counsel and Native advocates, but the claims were heard together, as they all related to the one matter. That was the cession, or, as it is sometimes termed, the confiscation, of the Kauhouroa Block, in the Wairoa District.

77. That cession was effected by a deed or agreement bearing date the 5th April, 1867, made between Reginald Newton Biggs, on behalf of Her Majesty the Queen, on the one part, and certain chiefs and Natives of the Wairoa District having rights or claims within the district therein referred to. The agreement, after reciting some of the provisions of the East Coast Land Titles Investigation Act, 1866, witnessed that, in consideration of the said rights and claims and of the loyalty and good services of the said chiefs and Natives during the insurrection on the East Coast and of the covenants thereinafter contained on their part, and in order to consolidate the claims of Her Majesty under the said Act, and of the several hapus to which the said chiefs and Natives belonged, the said Reginald Newton Biggs agreed to withdraw all the claims of Her Majesty under the said Act so far as related to the land comprised in the schedule lying south of the Ruakituri River, as shown on the sketch-map drawn on the agreement, except the land within certain specified boundaries, this excepted part being what is known now as the Kauhouroa Block. The said R. N. Biggs agreed also to make certain reserves in this block. The chiefs and Natives, for their part, in consideration of the covenant and reserves and of £800 paid to the hapu, agreed to withdraw all claims they or any of them had in the Kauhouroa Block, and ceded the block and all their right, title, and interest therein to Her Majesty and her successors.

78. In petition No. 9 it was claimed that (*a*) the confiscations were excessive; (*b*) the confiscations made should have been concentrated upon the district starting the rebellion. In petition No. 10 it was claimed that a promise had been made by the Crown that a portion of Kauhouroa Block should be restored to the petitioners' tribe in recognition of their loyalty during the Hauhau rebellion. In petition

No. 11 it was claimed that by deed of cession twenty 50-acre sections in the Kauhouroa Block had been promised the owners of the block by the Crown, and that such promise had not been fulfilled. In petition No. 12 A, B, C, it was claimed that the petitioners had been too hardly treated in the matter of the confiscation, or forced cession, of the Kauhouroa Block. In petition No. 12A, it was claimed that the confiscation had been excesive and wrongful in not discriminating between loyalists and rebels. In petition No. 13 it was claimed that the reserves in the Kauhouroa Block had not been returned to the Maori owners as promised.

79. In stating the case before us the petitioners' representatives separated the claims of the descendants of the rebels from those of the loyalists. The claims set up can be summarized as follows: (*a*) The Crown's possession of the block was the result of not a voluntary but a forced cession, amounting to a confiscation, and such confiscation was not justified; (*b*) the undertaking by the Crown in the deed of cession to set apart Pakowhai and twenty 50-acre reserves had not been fulfilled; (*c*) the consideration for the cession of the block was, *inter alia*, a verbal promise to grant to the loyalists certain blocks of land liable to be confiscated under the provisions of the East Coast Land Titles Investigation Act, 1866, and this promise has not been carried out.

80. So far as the descendants of the loyalists were concerned, they acknowledged the validity and propriety of the deed of cession, and did not seek to go behind it. There is nothing before us to justify the view that the cession was forced on the Natives who signed the deed. It was attacked, however, by the descendants of the rebels on the grounds (1) that the cession was tantamount to a confiscation, and that such confiscation was not justified, or, if justified, was excessive; (2) that the loyalists had no right to cede land part of which belonged to the rebels. The rebels had some interests, of course, in the Kauhouroa Block, and they were entitled to retain these interests until deprived of them in due course of law. It is clear that the rebels were not bound by the deed of cession, and that the Natives who signed it were not entitled to transfer to the Crown the interests of the rebels in the block. The Crown might have acquired these interests by obtaining a certificate under section 4 of the East Coast Land Titles Investigation Act, 1866. But that was not done, and on a strictly legal basis there is no answer to the claim put forward on behalf of the descendants of the rebels. That, however, is all that can be said in favour of the claim, for otherwise it is without merit. The land of the rebels was practically confiscated by the Act of 1866, and all that the Crown had to do to complete its title to the land was to obtain a certificate under section 4 of the Act. According to good conscience and equity, the Crown ought to be treated, so far as the rebels are concerned, as being in the same position as if a certificate had been obtained, and we recommend accordingly that the claim should not be recognized.

81. With regard to the second claim, the position is that the Crown agreed in the deed of cession to set apart Pakowhai for the benefit of Mere Karaka and her hapu, and twenty sections of 50 acres apiece for the benefit of owners, between the rivers Wairoa and Kauhouroa. Pakowhai was set apart, but the twenty sections were not. It is significant that there is no record of any complaint having been made as to the non-fulfilment of this undertaking. Other complaints were made, and unless this undertaking had been satisfied in some way it is unlikely that the Natives would have allowed it to be overlooked for so many years. And in addition to this, there is evidence of an agreement for satisfying the undertaking by a money payment. That is contained in a letter of the 19th August, 1872, from Mr. Locke, the Government Land Purchase Officer, to the Hon. J. D. Ormond. After briefly outlining the dealings in regard to Kauhouroa and the adjoining four blocks, Mr. Locke writes, "The Natives subsequently withdrew their claim to the twenty 50-acre sections on the payment of £800 in liquidation of all claims of the loyal Natives to the land retained by the Government." There is no evidence of the payment beyond Mr. Locke's statement on the subject, but in the circumstances that ought to be accepted, we think, as proof of the payment. This £800 cannot well be confused with the £800 referred to in the deed of cession. The deed

acknowledges the receipt of that £800, and there is no reason to believe that the Crown wrongfully withheld the payment after receiving an acknowledgement in the deed, and in view of the fact that the deed was written and executed in Maori it is equally unlikely that the signatures were given without the money being paid.

82. With regard to the third claim, it is submitted by the petitioners that the loyal Natives made a definite bargain with the Crown to cede the Kauhouroa Block in consideration, *inter alia*, of the Crown giving them the whole of the balance of the confiscated blocks released by the deed of cession, and that the loyal Natives were entitled, therefore, to the whole of the four blocks—viz., Ruakituri, Taramarama, Tukurangi, and Waiau Blocks. In support of their claim the petitioners relied upon the following statement in a report written by Mr. Locke to Mr. McLean on the 5th October, 1869: "Ihaka Whaanga, Paora Te Apatu, and other chiefs appeared anxious to know whether the arrangements that were made in the presence of Messrs. McLean and Richmond at Hatepe, Wairoa, respecting the lands to be returned to the Government Natives at Wairoa, would be carried out. Those arrangements were that that portion of the confiscated block not taken by the Government should be returned with Government certificate to those loyal chiefs who fought for us at the Wairoa. That arrangement has not yet been carried out. It is very desirable that a matter which has now been pending over three years should be settled without further delay."

83. The petitioners relied also on the terms of the deed of cession in proof of their claim. By that deed the Crown withdrew all claims to the land outside the Kauhouroa Block. That meant, of course, a withdrawal in favour of some particular person or persons. Obviously, it was not intended to be for the benefit of any of the rebels, and must have been for the benefit of the loyal chiefs and Natives. The only claim the Crown had in the land in question was to the interests of the rebels. It had an inchoate right to these interests, and that right could have been made complete and effective by obtaining a certificate under section 4 of the Act of 1866, or under section 4 of the Act of 1868, which replaced the Act of 1866. Having regard to this position, the deed of cession ought to be construed, we think, as being in effect as assignment to the loyal chiefs and Natives of the claim of the Crown to the interests of the rebels. This would involve also an undertaking by the Crown to do whatever was necessary to make the assignment effective and to give the loyal chiefs and Natives a title to the land. Instead of doing that by obtaining a certificate under section 4, of the Act or by getting the necessary legislation passed by Parliament, the Crown allowed the matter to drift, and ultimately the loyal Natives had to accept the agreement embodied in the deed of the 6th August, 1872. This deed, which was signed by only eighteen Natives, of whom three, we were told, were rebels, provided that the land in question should be conveyed to the loyal claimants to be subdivided into several portions to the Natives mentioned in the schedule. In the schedule were included one member of the Urewera Tribe and a number of other rebel Natives. But this agreement was not carried into effect, and the question of the four blocks was considered at a large meeting of Natives held at Wairoa on the 29th October, 1875. Mr. Locke was present at the meeting and addressed the Natives. The following is an extract from the report furnished by himself of his address: "This land—that is, up to Waikaremoana Lake—was confiscated during the time of the rebellion, the principal owners of the land having allied themselves with the enemy of the Government. On the restoration of peace some little time elapsed, when the Government relinquished its hold to a large tract of the country so confiscated in favour of the Natives of the district who had throughout preserved their allegiance to the Crown." Mr. Locke addressed the Natives again at a later stage of the meeting, and this is an extract from the report of his speech: "On peace being made with the Urewera Natives they submitted a claim to this land in conjunction with the Ngatikahungunu Natives, to whom the land had been returned. Had the Government acquired and retained this land before the restoration of peace with the Urewera, no claim of theirs would ever have been heard of to the land in question. The Government were evincing no small consideration for the Urewera Natives in sanctioning at all the investigation of the claim put forth by them, considering the ground upon which they assert their rights, being, as they were at the time, in rebellion when the land was confiscated and dealt with."

84. The matter of the title to the land was then brought before the Native Land Court for determination. In dealing with it the Court was bound, of course, to decide according to Native custom, and was not entitled to consider or give effect to any agreement made by the Government with the loyal Natives. The result of the decision of the Court was that about eighty loyal Natives and about 121 rebels were declared to be the owners of the land. The matter was put through by the Native Land Court with unusual expedition, and the land was bought immediately afterwards by the Crown.

85. The result of the evidence is to establish, we think, that there was an agreement by the Crown to give the land in question to the loyal Natives. Mr. Locke and his superiors, although admitting clearly the existence of the agreement, apparently thought that the Crown was entitled to play fast and loose with it. Nothing was done to carry out the agreement, and then in 1872 the loyal Natives had to accept the agreement of the 6th August, 1872. But a change of circumstances made it inexpedient to carry out even that agreement. Peace had been made with the Ureweras, and it was evidently desired to placate them. Only one of them—namely, Makarini—had been included in the schedules to the deed of the 6th August, 1872. It would please them greatly, no doubt, if they were allowed to get a title to part of the land. To enable that to be done, the deed of the 6th August, 1872, had to be scrapped. It was ignored accordingly by the Crown, and the parties sent to the Native Land Court. They went before the Court, and although the Ureweras had been obstinate and notorious rebels they were allowed to get a title to the land, and no attempt was made to obtain a certificate under section 4 of the Act of 1868. In this way the Crown got rid of its undertaking to the loyal Natives, and their claim to the land was defeated. The result has been that the Ureweras got £1,250 of purchase-money which they ought not to have got, and have 2,500 acres of reserve which they ought not to have got. It has been suggested that the present claim was settled by the payment of £1,500 made to the loyal Natives in 1875, and was released by the agreement of the 15th January, 1876, signed by Ihaka Whaanga and 440 other Natives. At the hearing before us this agreement was not relied on by the Crown as an answer to the claim. The agreement certainly does not cover in terms the present claim. In consideration of the £1,500 the Natives released any further claims they had for services rendered during the rebellion, and they covenanted and agreed to convey absolutely all their right, title, and interest in the four specified blocks. These words, according to their ordinary meaning, must refer to the right, title, and interest which the Natives, or some of them, had acquired under the orders of the Native Land Court. They cannot be treated, we think, as covering a claim to land which had been promised to them by the Crown, but which had been vested in the rebels by the orders of the Native Land Court. The loyal Natives had not the shadow of any legal right, title, or interest in the lands thus awarded to the rebels. Their claim was against the Crown for compensation for the loss they had suffered by reason of the promise made to them and not carried out. We think, therefore, that the agreement is not an answer to the present claim, and that the petitioners have made out a case for relief. We recommend that a yearly sum of £300 be paid for the purpose of providing higher education for the children of Natives of the Wairoa District. Mr. Reed does not concur in this conclusion and recommendation, and has set forth his views on the matter in the subjoined memorandum.

Petitions Nos. 14 and 15.

86. These petitions referred to the purchase of Nuhaka No. 1 Block by the Crown on the 16th March, 1865. Petition No. 14 was filed in 1922, and sought relief on the assumption that the sale had not been completed by the Crown. The non-inclusion of the deed of conveyance in Turton's deeds gave rise to the belief that the deed did not exist. Petition No. 15 was filed in 1926, when the existence of the deed was known, and claim for relief was made on the grounds that the petitioners' elders did not take part nor obtain any benefit from the sale. The petitioners in No. 14 abandoned the allegation that there was no deed, and proceeded on the grounds stated in petition No. 15.

87. The purchase of Nuhaka No. 1 Block by the Crown appears to have been conducted in the manner usual at the time. By Native custom the chiefs of the tribe selling were the responsible parties to carry out the negotiations for land-sale, execute documents, and receive the consideration payment. Such seemed to have been the procedure on this occasion. Matenga, the resident chief, at a meeting of his tribe, held apparently on the land, agreed to the sale. Ihaka Whaanga, the paramount chief at Wairoa, however, refused his sanction, and a second meeting was held. At both of these meetings Mr. McLean, on behalf of the Government, was present. At the second meeting the evidence, in the form of a newspaper report, stated that "Ihaka and his friends, who accompanied us from Te Wairoa, finding that Matenga and his people resident on the land were bent upon selling, gave in their consent." The proceedings seem to have been carried out strictly according to Maori custom, and the sale of the land was before the residents of the block for at least two months. The chiefs, Ihaka Whaanga, Te Matenga, and Paora Te Apatu, all signed the deed of conveyance, and it was their duty, according to Maori custom, to partition the purchase-money out amongst the rightful owners and there is no reason to think at this late period that this was not done. We think, therefore, that the petitioners have not made out any case for relief.

Petitions Nos. 16 and 17.

88. These petitions refer to the same block of land as the two previous petitions —namely, Nuhaka No. 1 Block. In these petitions it is claimed that land known as the Mangaopuraka Block was included in the sale of Nuhaka No. 1 Block purchased by the Crown in March, 1865. This contention is based on a statement alleged to have been made at the hearing of the Rangataua Reserve at Nuhaka, but the Wairoa Minute-book No. 31 referred to contains no such statement. In petition No. 17 the area claimed is 20,000 acres, which makes the Mangaopuraka Block more than half the area sold, and greater than Nuhaka No. 1 Block, under which name the sale was effected. The inclusion of the Mangaopuraka Block in the sale under the name of Nuhaka No. 1 Block is stated in the petitions to have been a mistake—that is, by accident. We cannot think that such a mistake could have taken place, and, if it had, that it would not have been rectified soon after the transaction—sixty-three years ago. The petitioners have not made out any case for relief.

Petition No. 18.

89. This petition sets out a claim for the return of a block of land, known as Mangatea, alleged to have been sold to the Crown by Maoris who were not the owners of the block, and wrongfully included in the sale of the Mahia Block on the 20th October, 1864. This is the first petition to be presented in reference to this matter —sixty years after the deed of conveyance was executed and the Crown took possession of the block of land. The evidence in support was not convincing. If the Ngatihikairo hapu were the owners of the block containing 5,800 acres, and could substantiate their claim, it is improbable that no action would be taken while the elders were alive. References were made in the petition, and in the advocate's address, to the Native Land Court proceedings in regard to the Te Tawapata Block, and much importance was attached to statements of Wiremu te Ruamanga in claiming the north portion of that block. This land which the petitioners claimed, they asserted, was "Mangatea"; whereas clearly it is "Te Tawapata North." We are of opinion that the petitioners have not made out any case for relief.

Petition No. 19.

90. This petition deals with a purchase by the Crown from Maoris, seventy-six years ago, of the Mohaka Block, containing 86,000 acres. The petitioners acknowledge the validity of the deed of conveyance, and claim inadequacy of purchase-money. The purchase-money was £800, and the date of the sale the 5th December, 1851. There is no trace of any other petition having been presented to Parliament, and it appears from the files that this is the first claim of its kind made regarding the Mohaka Block. It is not possible after such a long delay to

arrive at any satisfactory conclusion as to the adequacy or otherwise of the purchase price. Apparently the Maoris at the time were satisfied. Seeing that it was bush and scrub land, in a very warlike district, with no access, it was probably not worth more than what was paid for it. The petitioners have not made out, we think, any case for relief.

ARAWA DISTRICT.

Petition No. 21.

91. The petitioners in this case are members of the Ngatitu hapu, and their case is this: In the year 1886 the Tarawera eruption destroyed their pas at Kaiteriria, Motutawa, and Tikitapu, and covered their land with pumice. Of the 7,000 acres which they held originally, 6,000 acres were sold to the Government after the eruption for 2s. 6d. per acre, and the 1,000 acres they have left is alleged to be valueless and unfit for occupation. They claimed to be members of the Tuhourangi Tribe, and applied under section 27 of the Native Land Amendment and Native Land Claims Adjustment Act, 1921, to be added to the list of beneficial owners of the block granted in trust for that tribe. This application was opposed by the principals of the Tuhourangi Tribe, and the Native Appellate Court refused to add the names of the petitioners to the list. The members of the Ngatitu hapu, according to the evidence, are scattered about the North Island, but they have two meeting-houses in which they meet occasionally, and they endeavour to maintain their existence as a separate hapu. They pray that a grant may be made to them of a piece of land on which they could live together.

92. The lands of certain Natives of the Tuhourangi Tribe were rendered uninhabitable by the Tarawera eruption, and a promise was made by the Government to set apart certain lands in the Aroha Survey District for the use and occupation of these Natives. Under section 7 of the Native Land Amendment and Native Land Claims Adjustment Act, 1918, the Native Land Court inquired as to the existence of the promise, and ascertained the persons to whom the land should be granted. This case is a precedent for making a similar grant in the present case. The case as presented by the petitioners appeared to be a deserving one, but the Crown was not able to say anything about the position of the petitioners. We recommend that inquiries should be made as to their position, with the view of assisting them, if possible.

TAURANGA DISTRICT.

Petition No. 22.

93. The petitioners in this case, being members of the Ngati-Maka Tribe, allege that they are the descendants of loyal Natives whose land was included in the Tauranga confiscation, and that they are now landless. They pray that relief may be afforded by granting them a block of Crown land in the Parish of Apata, County of Tauranga, containing 1,050 acres. The petitioners did not offer any evidence in support of the allegation that they are now landless. This petition really raises a general question of policy—namely, whether or not the Government should undertake to provide land for Natives who are landless. That is a question outside the scope of our inquiry, and we do not make any recommendation on the subject.

Petition No. 23.

94. The petitioners in this case are members of the Ngaitemarawaho Tribe, a subtribe of the Ngaiteranginui Tribe. They allege that the land of their ancestors was included in the Tauranga confiscation, and that an area of about 100 acres only was returned to them. They further allege that owing to the increase in the number of their tribe many of the members are landless or have insufficient land to support them. They pray for a grant of land. The observations made on petition No. 22 apply to this petition also. In this case a search-paper was produced giving the land owned by the members of this hapu. This shows (*inter alia*) that Lot 536, Parish of Te Papa, containing 600 acres, is owned by 111 persons, and that in some cases a successor under a succession order has got one-seventieth of a share. The search-paper shows also that Section 80, Block 10, Tauranga

District, containing 59 acres, is owned by sixty-one persons, and that Lot 452, Parish of Te Papa, containing 41 acres, is owned by 112 persons, with succession orders showing division of shares down to a fraction of $\frac{1}{300}$.

Petition No. 24.

95. This petition raises the general question of the Tauranga confiscation, and is covered by what has been said already on that subject.

WAIKATO DISTRICT.

Petitions Nos. 25 and 28.

96. These deal with the general question of the Waikato confiscations, and are covered by what has been said already on that subject.

Petitions Nos. 26 and 27.

97. The petitioner in these cases is Margaret Lydia Evans, and both petitions deal with the same grievance. The petitioner is the daughter of Mere Ngahoroi, a member of the Ngatitemainu and Ngatiapakura Tribes, whose lands were confiscated after the Waikato war. Parts of these lands were afterwards restored to the Natives, and it is alleged in both petitions that the petitioner has not received or been awarded any portion of such lands. This last allegation is admittedly untrue, and the petitioner's real grievance is that she and the other members of her family did not get the shares to which they thought themselves entitled.

98. The matter came before a Compensation Court sitting at Ngaruawahia in 1867. In pursuance of the award of that Court, a grant was made of a block of land in trust for the loyal members of the Ngatitemainu and Ngatikotara Tribes. In the year 1898 an order was made by the Native Land Court determining who were the persons beneficially entitled under the trust. The petitioner and her brothers and sisters were all included in the list of Ngatitemainu owners. In the year 1902 the respective shares of these owners were settled by the Native Land Court. The petitioner complains that she and her brothers were not awarded the shares to which they were entitled, having regard to the rank of their mother. This was the grievance stated in the petition presented by the petitioner to the House of Representatives in the year 1904. The Native Affairs Committee recommended that the petition should be referred to the Government for inquiry, and this report was adopted by the House of Representatives. The petition was reported on by Judge Johnson, of the Native Land Court. He was the Judge who made the order in 1902, and it appears from his report that in most cases the shares of the respective owners were settled by the Natives themselves. It is true that the petitioner and her brothers and sisters were not represented directly at the hearing before Judge Johnson, but that is not of itself a sufficient ground for reopening an inquiry of that kind. In the petition presented in 1904 the petitioner alleged that the Patene family got more than they were entitled to. The claims of her family, the petitioner said, were equal, if not superior, to those of the late Wiremu Patene's family, as their mother, Mere Ngahoroi, was of a higher rank and a larger landowner than Wiremu Patene. The following is the observation made by Judge Johnson in his report on this question: "It is not necessary for me to go into the question raised by petitioner as to the rank of her mother, Mere Ngahoroi. The opinion of the great bulk of the people of the two hapus as to the position of the descendants of the late Rev. Wiremu Patene is shown by the division made of the total area of the land. An opposing case was set up by Pepa Kirkwood, licensed Native agent, on behalf of Tewi Kingi and party, but it was found to be utterly without merit. The Court then expressed the opinion that Hone Patene's party had really accepted less than they might have claimed." "Every effort," said Judge Johnson, "was made by leading Natives to secure a satisfactory settlement of this long-standing question, and it was thought that they had succeeded."

99. Before such an inquiry should be reopened, particularly after the lapse of a quarter of a century, it must be reasonably certain that a serious injustice has been done, and that it is possible to remedy that injustice. The petitioner has failed, we think, to establish either of these propositions. Although the petitioner's

family was not represented before the Court in 1902, the claims of the family must have been considered, for the shares of the children were all fixed, and it is reasonable to conclude that they did not suffer really by reason of their absence. It would be absurd, we think, to reopen the inquiry now on the somewhat fantastic ground that sufficient importance was not attached by the Native Land Court to the rank of Mere Ngahoroi. In connection with that question it is to be noted that the petitioner's own witness, Aire Huirama, said that Wiremu Patene was the paramount chief of the tribe. But if the inquiry were reopened it would not be possible to readjust the shares of the respective owners without inflicting serious hardship on those who would be deprived thereby of shares which they had enjoyed for twenty-five years. We think, therefore, that the petitioner has not made out any case for relief.

TARANAKI DISTRICT.

Petition No. 29.

100. The case made in connection with this petition was this: In the report of the West Coast Commission of the 13th March, 1880, it was recommended that 25,000 acres of confiscated land should be set aside as a continuous reserve, extending the whole distance between the Oeo and Waingongoro Rivers. This reserve, on survey, was found to contain 25,363 acres, while the total area granted to Natives was only 20,348 acres. The petitioners, who are members of the Ngatitu hapu, claim to be entitled to a grant of approximately 5,000 acres. It appears from Sir William Fox's letter to the Native Minister of the 8th March, 1882, that the Government decided to deduct 5,000 acres from the reserve, and that is why more land has not been granted to the Natives. The Government was entitled, of course, to do that, as the Natives had not acquired any legal or moral claim to have full effect given to the recommendation of the Commission. We think, therefore, that the petitioners have not made out any case for relief.

Petition No. 30.

101. The petitioner, George Ashdown, alleges that his mother, Maata Pekema, a member of a Taranaki tribe belonging to the Ngatitairi hapu, was interested in certain lands in Taranaki which were confiscated, and that she did not receive any compensation in respect thereof. The petitioner admits that he himself got 218 acres, but alleges that he got these in right of his uncle Raukutauri, whose interest was 600 acres. He claims to be entitled to some land in right of his mother also.

102. According to the evidence of Mr. Moverley, who was called as a witness by Mr. Taylor on behalf of the Crown, the name of the petitioner appears in a Crown grant of land in the Ngatitira Block along with the name of his uncle and with the name of his sister. It is reasonable to conclude that he must have got into the grant in right of his mother, who had died in 1875. That was in 1883, and the petitioner afterwards got over 300 acres on a partition of the land granted. The reply made by the petitioner is that the land he got was through the Ngatitira hapu, and that he is entitled to claim also through the Ngatitairi hapu. It was suggested by Mr. Smith, on behalf of the petitioner, that the matter might be referred to the Native Land Court for further inquiry. In view of the facts proved by Mr. Taylor, we think that the petitioner has not made out any case for further inquiry.

Petitions Nos. 31, 33, 35, 36, and 40.

103. These deal with the general question of the Taranaki confiscations, and are covered by what has been said already on that subject.

Petition No. 32.

104. This deals with confiscation generally, and the petitioners claimed also that a promise to return some of the confiscated land to them had not been carried out. Mr. Taylor contended that the promise had been more than fulfilled. In view of the recommendation made on the subject of confiscation, it seems unnecessary to express any opinion on this disputed question.

Petitions Nos. 34, 38, 39, and 41.

105. These petitions all deal with the subject of the Rangitatau Block, Taranaki District. We have not considered it necessary to discuss the merits of the claim which the Natives originally had in connection with this block. That claim was settled by agreement between the Crown and the Natives, and authority to carry out the agreement was conferred by the Rangitatau Block Exchange Act, 1907. The agreement was carried out and titles given to the Natives under the authority of that Act and under the additional authority conferred by section 118 of the Reserves and other Lands Disposal and Public Bodies Empowering Act, 1915. It is not suggested that the Natives did not understand the agreement they made, and they have accepted, without objection, the benefits conferred on them thereby. It certainly does not accord with good conscience or equity that they should attempt now to go behind that agreement and to reopen their original claim. The petitioners are not entitled, we think, to any relief on their petitions.

Petition No. 37.

106. One of the allegations in this petition is that during the course of what is known as the Parihaka expedition in 1881 the Government soldiers plundered the houses of the people, confiscated all guns found, smashed open boxes containing valuable greenstone goods and other things held dear by a Maori. The prayer of the petition appears to be for relief in connection only with the confiscation of Native lands. It was contended, however, by Mr. Smith that the petition ought to be treated as claiming compensation for the damage complained of in the petition. Mr. Taylor, on behalf of the Crown, contended that this could not be done, as the petition did not claim such compensation specifically. It appears to us that it is our duty to inquire into the allegations in the petition, and, if found to be true, to make such recommendation thereon as appears to accord with good conscience and equity. It was not disputed that looting had taken place, and evidence on the subject was given by several witnesses. According to these witnesses, some of the soldiers looted the houses, broke open boxes, and carried away mats and greenstone meres and tikis, and also all guns and powder. They took away also live-stock, consisting of horses, cattle, and pigs. They destroyed the growing crops, and pulled down a number of the houses in the pa. The late Colonel Messenger, who took part in the expedition, said, in the statement which he gave to Mr. Cowan, the historian, that orders had been given that no Maori property was to be touched, but he knew there was a good deal of looting—in fact, robbery. Many of our Government men, he said, stole greenstone and other treasures from the Native houses, including some fine meres.

107. The subject of the expedition is discussed shortly by Mr. Reeves (" The Long White Cloud," 3rd ed., p. 225.), and we quote the following passage from his book : " It is true that the delays in redeeming promises concerning reserves to be made and given back from the confiscated Maori territory were allowed to remain a grievance for more than another decade, and led as late as 1880 to interference by the Natives with roadmaking in some of this lost land of theirs at Taranaki. There, round a prophet named Te Whiti, flocked numbers of Natives sore with a sense of injustice. Though Te Whiti was as pacific as eccentric, the Government, swayed by the alarm and irritation thus aroused, took the extreme step of pouring into his village of Parihaka an overwhelming armed force. Then, after reading the Riot Act to a passive and orderly crowd of men, women, and children, they proceeded to make wholesale arrests, to evict the villagers, and to destroy houses and crops. Public opinion, which had conjured up the phantom of an imminent rising, supported the proceedings. There was no such danger, for the Natives were not supplied with arms, and the writer is one of a minority of New-Zealanders who thought that our neglect to make the reserves put us in the wrong in the affair."

108. The view taken by Mr. Reeves is that now generally accepted, and is the view on which we think the present claim should be judged. The Government was directly responsible, of course, for the destruction of the houses and crops, for that apparently was part of the plan of campaign. The theft of the stock and personal belongings of the Natives may not have been part of that plan, but the Government must be held responsible, morally if not legally, for the acts of the

soldiers who were brought to Parihaka. The Natives apparently have not kept any record of the losses suffered in this way by them, and it is impossible now to ascertain exactly what these losses were and who the individual sufferers were. But notwithstanding this difficulty the case, we think, is one in which, according to good conscience and equity, a sum should be paid as an acknowledgement, at least, of the wrong that was done to the Natives of Parihaka. We recommend accordingly that the sum of £300 should be paid for this purpose, and added to the first annual payment of £5,000 recommended in paragraph 16 of this report.

North Auckland District.

Petitions Nos. 42, 43, 44, 45, 46, 47, 48, and 49.

109. The several petitions numbered 42 to 49, referring to what are known as "tenths," were grouped together for purposes of inquiry. For a period of five months during the years 1853–54 a clause was inserted in conveyances of land purchased within the Auckland District by the Crown from Maoris, which read as follows: "It is further agreed to by the Queen of England, on her part, that there shall be paid for the following purposes—that is to say, for the founding of schools, in which persons of our race may be taught; for the construction of hospitals, in which persons of our race may be tended; for the payment of medical assistance for us; for the construction of mills for us; for annuities for our chiefs, or for other purposes of a like nature, in which Natives of this country have an interest—ten per cent, or ten pounds out of every hundred pounds, out of any moneys from time to time received for that land when it is resold."

110. The reason, apparently, for the inclusion of this clause was a desire on the part of the authorities to provide for the education and health of Maoris, and evidently it was intended to extend the policy throughout the colony. The clause was put into operation by Governor Sir George Grey; but the difficulties it created were realized by Mr. Swainson, the Attorney-General, who was responsible for the discontinuance of the clause. In the meantime, however, some eight conveyances had been executed with the clause included, and it is claimed that the terms of this clause have not been carried out by the Crown. Evidence produced, showed on a conservative basis, the estimated value of the "tenths" to be under £9,000. Of this sum apparently nearly £1,700 was distributed among the chiefs in accordance with the clause in the deeds of conveyance. This left a sum of approximately £7,000 in hand for the Government to apply for Maori education and health services. In this connection evidence showed that a sum well over £2,000,000 had already been spent on these services for the benefit of Maoris. The Maoris have received special medical services from the State apart from the general services to which they have equal access with the European population. In education, the Maoris have special schools established in their settlements, and records show that nearly £500,000 has been expended on Maori education in the Auckland and North Auckland Districts between the years 1880 and 1925. It was contended by counsel for the Crown that this expenditure ought to be treated as a performance of the obligation created by the covenants. We think that this is the proper view to take of the matter, and that the petitioners are not entitled to any relief.

111. We desire to take this opportunity to point out that the Education Regulations might be extended with much benefit to the Maoris were they to include in the syllabus a course of training for boys in woodwork and ironwork—carpentering and plumbing especially. Under the present regulations this class of work is optional with the teachers, and little or no financial assistance is given by the Department. The Maori is an excellent mechanic, and a course of elemetary instruction would fit him to follow a trade in the country districts in which he lives. As it is now, after his school-days, the Maori boy takes up unskilled manual work because he has no opportunity of learning a trade.

Petition No. 50.

112. In this petition Patu Hohaia and others claim that an injustice had been inflicted upon them by the acquisition by the Crown of a certain block of land

known as the Puketi Block, containing 1,919 acres, in the Whangaroa District, North Auckland. Records showed that this block of land was included in a purchase by James Shepherd from the Maori owners on the 18th August, 1836. The land was transferred by gift by him to his brother-in-law, J. M. Orsmond, in 1841, and a grant was issued to J. M. Orsmond for the land in 1844. This grant was called in under the Land Claims Settlement Act, 1856, and dealt with by the Bell Commission. The result of this inquiry was that a grant dated the 19th January, 1864, was issued to James Shepherd, the original purchaser, for two areas —1,919 acres (the subject of this petition) and 98 acres—being part of the original grant to J. M. Orsmond. The records show that the Native title to this block had been extinguished, since 1836, by private purchase. A search of the records shows that the Crown had no interest in the land until 1917, when it acquired a portion from the then European owners; and further that the block in question was sold in 1884 to a timber company, apparently for the timber. The petitioners have not made out any case for relief.

Petition No. 51.

113. Henry Pitman and others in this petition claimed, through one Tauwhitu, a block of land on the Whangateau Harbour, called the Pikiomaha Block, which they also claimed was *papatapu* land—that is, Native land that had not been investigated. From copies of deeds produced it was shown that transactions in connection with the purchase of an area of land including the block in question were commenced by the Crown by the signing by Maori owners of a deed of conveyance in 1841; and further deeds were signed by other Maori owners in 1844, 1853, and 1854. By one of these deeds—in 1853—signed by Tauwhitu, the whole of the signatories' interest in "all Mahurangi" was disposed of, and the boundaries of "all Mahurangi" are shown by sketch on the deed, and included the Pikiomaha Block. It is evident, however, by the deed that Tauwhitu did not claim the Pikiomaha Block, but claimed, with Parihoro, a block south of the Whangateau Harbour. The area referred to by the petitioner appears to have been leased by the Crown to a Maori woman, Mere Kewene, of Omaha, in 1887. This lease was transferred by Mere Kewene to G. W. Sim, and from Sim to J. S. Ashton, and from Ashton to H. Ashton, the present holder. The petitioners claim 7,000 or 8,000 acres, or all the land included in the Crown purchases of 1841–1853 lying to the north of the Whangateau Harbour. There is no reliable evidence to support this claim, while the documents produced show that over eighty years ago the Crown purchased the whole block of land from Takapuna to Rodney Point, and that the Pikiomaha Block was included in the purchase. The petitioners have not made out any case for relief.

Petition No. 52.

114. Herepete Rapihana in this petition claims on behalf of the Pukepoto Natives a block of land near Kaitaia, known as Tangonge Block, containing approximately 1,000 acres. This area was included in a purchase from the Maori owners by the Rev. Joseph Matthews, and a grant for same had been issued by Governor Fitzroy in 1844. This grant, with others, was called in under the Land Claims Settlement Act, 1856, and an inquiry instituted in 1857 before Commissioner Bell. In evidence Mr. Matthews claimed 1,855 acres in the Summerville property at Kaitaia, which included the Tangonge Block, the subject of this petition. He stated that these surveys were made entirely with the knowledge and consent of the Maoris.

115. On a reduction of area by the Court of Claims, Mr. Matthews elected to cut off 685 acres of low swampy land in one piece in the Summerville property. This piece of land—the Tangonge Block—was accordingly resumed by the Crown as surplus land, and a grant was issued to Mr. Matthews for the balance of the Summerville property — viz., 1,170 acres — on the 15th February, 1859. The Tangonge Block has been Crown land since 1858. The petitioner claims that Mr. Matthews, at the Court of Claims, gave the Tangonge Block back to the Natives, whereas Mr. Matthews's written testimony disproves such a contention, and it is evident that any remark made by Mr. Matthews suggesting the return of the

land to Maoris must have referred to other land, and not to the Tangonge Block. The subject-matter of the petition has been before two previous Commissions. The first—Mr. Houston's Commission—found that the land was given back to the Maoris by Mr. Matthews, and the second—Judge MacCormick's Commission—found that the Native title to the land had been extinguished, and, as "surplus lands," the Tangonge Block had become Crown land. It is a question whether or not, in good conscience and equity, "surplus lands" in purchases of that kind should be treated as belonging to the original Native owners and not to the Crown, and we do not express any opinion on that question. From the evidence produced at the hearing of this petition it is evident that the Tangonge Block was sold by the Maori owners to the Rev. Joseph Matthews, and the petitioners have failed to prove that Mr. Matthews agreed to give any part of the block back to the vendors.

Petition No. 53.

116. In this petition the petitioners, Hemi Riwhi and others, claim that Otangaroa Block No. 2 was inalienable except by lease, and that there was no receipt for the purchase-money on the sale of the block from the Maori owners to one George Holdship. A copy of the memorial of ownership for the Otangaroa Block No. 2, dated the 10th October, 1876, was submitted in evidence. This memorial declared seventeen Natives, whose names appeared in the table, as owners of the block, and contained a clause restricting alienation, other than by lease, in accordance with section 48 of the Native Land Act, 1873. Under section 49 of the same Act it is enacted: "Nothing, however, in the foregoing condition annexed to any memorial of ownership shall be deemed to preclude any sale of the land comprised in such memorial where all the owners of such land agree to the sale thereof." Taking advantage of the provisions of that section, all the seventeen Maori owners executed a conveyance dated the 8th January, 1877, to George Holdship for £816 17s. The deed of conveyance contains a certificate by the Trust Commissioner under the Native Land Frauds Prevention Act, 1870 (Auckland District), whose duty (*inter alia*) was to see that the vendors received the full purchase-money, for which a receipt appeared on the deed. It is therefore evident that the sale by the Maori owners was valid, and that the consideration money was duly received by them.

Petition No. 54.

117. The land mentioned in this petition, being Sections 19 and 23, Kaeo Survey District, was obtained by the Crown in two separate areas and in different ways. The southern portion of Section 23 was included in the Matawherohia Block, and was purchased from the Maori owners by the Crown by deed dated the 8th June, 1859. Section 19 and the northern portion of Section 23 were purchased by Mr. James Kemp in 1836, as part of the Whangaroa Block. On investigation by the Godfrey and Richmond Commission the area was reduced to 2,284 acres, but subsequently increased to 4,000 acres. Later, before the Bell Commission, the holding was again reduced to 2,722 acres, and the land contained in Sections 19 and northern part 23 excluded, and for that area a grant was issued to James Kemp, and the land contained in Sections 19 and part 23, which was excluded from the grant, became "surplus land," and, as such, Crown land. The Native title to the land mentioned in the petition was extinguished by the sale to James Kemp and by the sale to the Crown, and the petitioners have not made out any right to the land.

Petition No. 55.

118. The petitioners in this petition pray "to have returned to them their island, Motukaraka, containing 4 acres, more or less." This island was purchased from the Maori owners by Thomas McDonnell in 1831, and a grant was issued to him under the Land Claims Settlements Acts on the 4th December, 1860, and the Native title has accordingly been extinguished. The petitioners, however, varied their claim at the hearing of their petition, and claimed the return of the Motukaraka Block on the main land, amounting to 2,560 acres, or compensation in lieu thereof. Evidence showed that McDonnell purchased the Motukaraka Block

from the Maori owners in 1831. In 1844 the purchase was inquired into by Commissioners Godfrey and Richmond. In a note on the report by the Commissioners it is stated that the Native owners admitted the payment they received and the alienation of the land described in the report. The Commissioners then recommended a grant of 2,560 acres to Thomas McDonnell within the boundaries of the report—that is, from Tokotoroa, in the Narrows, to the rocks in the Te Tapuwae Creek—as the balance of the area claimed by McDonnell was disputed by the Maoris. The boundaries mentioned in the report approximately coincide with the boundaries of the Motukaraka Block, the subject of this petition. A grant was issued to McDonnell for 2,560 acres at Motukaraka, the boundaries of which were as reported by Commissioners Godfrey and Richmond. After the passing of the Land Claims Act, 1856, this grant apparently was called in and a survey directed to be made for the purpose of issuing a new grant with a more accurate description of the land. Owing to the Taranaki war, it was thought best not to proceed with the survey of Motukaraka, and an exchange was made with McDonnell by which the Crown granted McDonnell land at Whangarei and took a conveyance endorsed on the original grant from McDonnell. Mr. John Curnin is 1885 reported upon the block, and recommended the Crown proceeding with the occupation of the land acquired from McDonnell. It appears that events long after the sale of the Motukaraka Block created the impression with the Maoris that the sale was not valid, but there is no good reason for disputing the finding of Commissioner Richmond in 1844 that the Maoris then acknowledged the sale of the block as defined later in the grant.

Petition No. 56.

119. It is evident that the petitioners, James Maxwell and others, have misunderstood the true facts relating to their claim for the return of Okahukura Block. From departmental files it is clear that James Maxwell, sen., through whom the petitioners claim, did not acquire any interest in the freehold of the block from either Longford and Gardiner or C. I. Stone, neither of whom had any interests, other than timber-cutting rights, to dispose of.

We have the honour to be,

Your Excellency's most obedient servants,

[SEAL.] W. A. SIM, Chairman.
[SEAL.] VERNON H. REED.
[SEAL.] WILLIAM COOPER.

Dated at Wellington, this 29th day of June, 1927.

MR. REED'S MEMORANDUM ON PETITIONS Nos. 9 TO 13.

I DISSENT from the finding in the report relating to the third claim in petitions Nos. 9 to 13. That claim was based upon a bargain or agreement made by the Crown at Hatepe in 1867, at the time of the cession of the Kauhouroa Block, and, in my opinion, that claim has been satisfied by the Crown under agreement dated the 15th January, 1876. That agreement acknowledged the receipt of £1,500 from the Crown to the loyal Natives, paid by Mr. Hamlin, who recorded that payment as being for compensation for claims "in accordance with the agreement at Hatepe in 1867."

There was much confusion as to the nature of the verbal bargain or agreement made at the signing of the deed of cession at Hatepe, Wairoa, in April, 1867. In my opinion, the deed of cession is silent on the matter. Under the Act of 1866 the Crown obtained the right to confiscate the interests of the rebels in certain East Coast Native lands. The ownership to those lands were then unascertained. Under the deed of cession the Crown withdrew its claims to confiscate the lands south of the Ruakituri River and outside the ceded area—the Kauhouroa Block. From the passing of the Act in 1866 until the signing of the deed of cession in April, 1867, the Crown had the right to confiscate under that Act, but had not acted under that right. By the Crown withdrawing its claims to confiscate under

the Act the lands thereby released automatically reverted to their former state as existing prior to the passing of the Act — that is, Native lands with ownership unascertained. That was the case with the northern portion of the same area subjected to confiscation under the Act and subsequently released; and there is nothing to show any contrary intention with regard to the southern portion—that is, the area released under the deed of cession. On the contrary, that this was the case is confirmed by the following extract from the Napier minute-book No. 4 on the investigation of title to the four blocks before Judge Rogan at Wairoa in October-November, 1875, namely :—

"The Court wished to know from the District Officer if the land (Tukurangi Block) under investigation was confiscated.

"Samuel Locke, Esq., District Officer, stated this land was confiscated under the East Coast Land Titles Investigation Act, 1867; by deed of agreement dated the 5th April, 1867, between R. N. Biggs, Esq., on the part of the Government, and the loyal Natives of the district, the Government had retained a portion at the mouth of Waiau and at Kauhouroa situated between the Wairoa and Waiau, the remainder of land between Waiau and Ruakituri (*i.e.*, the four blocks) was abandoned by the Government to the original owners."

The petitioners based their claim upon a statement in a report written by Mr. Locke to Mr. McLean, dated the 5th October, 1869. The following is the statement :—

"Ihaka Whanga, Paora te Apatu, and other chiefs appeared anxious to know whether the arrangements that were made in the presence of Messrs. McLean and Richmond at Hatepe, Wairoa, respecting the lands to be returned to Government Natives at Wairoa would be carried out. Those arrangements were that that portion of the confiscated block not taken by the Government should be returned, with Government certificate, to those loyal chiefs who fought for us at the Wairoa. That arrangement has not yet been carried out. It is very desirable that a matter which has now been pending over three years should be settled without further delay."

Following this report, on the 6th August, 1872, a deed of arrangement was entered into by Mr. Locke, representing the Crown, and eighteen Maoris (stated to be fifteen loyalists and three rebels). The deed of arrangement recites the deed of cession, and records proceedings at a meeting of loyal Maoris and Mr. Locke, at which it was agreed that lands described in the deed of arrangement, and being the four blocks mentioned, "should be retained by the above-named loyal Natives" (excepting two small areas), and (later in the same deed) "shall be conveyed to the loyal claimants under the following conditions: The whole block shall be subdivided into several portions to the Natives mentioned in the following schedule hereto attached. The whole of the land shall be made inalienable both as to sale and mortgage, and held in trust in the manner provided or hereafter provided by the General Assembly for Native land held under trust."

That deed of arrangement was carried into effect, and, acting under the title given them by that deed of arrangement, Ihaka Whanga (a loyalist) and Makarini te Wharehuia (a rebel), with the other owners of the Tukurangi Block under the deed of arrangement, leased that block on the 28th July, 1873, to Percival Barker and others for twenty-one years. That lease was subsequently purchased from the lessees by the Crown.

Three years later, at a large meeting of Maoris at Wairoa on the 29th October, 1875, convened for the purpose of discussing the four blocks referred to, with a view to purchase by the Government, Mr. Locke opened the meeting by stating,—

"We have met here to-day to discuss this land question, and also the inter-tribal boundary, before they come before the Land Court, there to be dealt with. We have met here with a view to affording all parties an opportunity of ventilating their opinions on the subject. Those Natives acting in concert with the Government — namely, the Ngatikahungunu Tribe — assert their claim to the land on ancestral grounds, and also because during the period of trouble in the island they adopted the cause of the Government. On the other hand, you, the people of Tuhoe (Urewera), contend that portions of the land so claimed by Ngatikahungunu belong to you, having, as you declare, been either inherited by you from your

forefathers or acquired from your enemies through the right of conquest. . . . This land—that is, up to Waikaremoana Lake—was confiscated during the time of the rebellion, the principal owners of the land having allied themselves with the enemy of the Government. On the restoration of peace some little time elapsed, when the Government relinquished its hold to a large tract of the country so confiscated, in favour of the Natives of the district who had throughout preserved their allegiance to the Crown. Subsequently thereto action was taken to effect the transfer of this land to the Government, and now the question arises, To whom does the land belong? With whom rests the power of legally conveying this land to the Government? It is to meet these questions that the necessity occurs of having the land dealt with primarily by the Native Land Court. The adjustment of this question is one of no small difficulty. Both parties strongly urge their respective rights to the land on account of ancestral connections."

Then, at the close of the meeting, Mr. Locke said,—

"This land was confiscated after the first fight at Waikare. A meeting was held at the Hatepe for the purpose of coming to a final settlement of the interest of the Government Natives in the land confiscated. On the occasion of that meeting payment was made to them in liquidation of their claims to the portion taken over by the Government. The Government then became the sole proprietor of that land, the whole of the Native title being completely extinguished. The remainder of the land, being that which is now under discussion, was returned, with the proviso that the principal chiefs among the Natives on the side of the Government be appointed to look after the land. On peace being made with the Urewera Natives they submitted a claim to this land in conjunction with Ngati-Kahungunu Natives, to whom the land had been returned. Had the Government acquired and retained this land before the restoration of peace with the Urewera no claim of theirs would have ever been heard of to the land in question. The Government were evincing no small consideration for the Urewera Natives in sanctioning at all the investigation of the claim put forth by them, considering the grounds upon which they assert their right, being, as they were at the time, in rebellion when the land was confiscated and dealt with."

Mr. Locke's utterances were relied upon in support of the petitioners' claim. From the foregoing quotations it can be seen that Mr. Locke had described the terms of the agreement made by the Crown at Hatepe in several ways, as follows: (1) That that portion of the confiscated block not taken by the Government should be returned, with Government certificate, to those loyal chiefs who fought for us at the Wairoa; (2) that the Government relinquished its hold to a large tract of the country so confiscated, in favour of the Natives of the district, who had throughout preserved their allegiance to the Crown; (3) that at meeting at Hatepe the land withdrawn from confiscation "was returned with the proviso that the principal chiefs among the Natives on the side of the Government be appointed to look after the land." The two last statements were made at the Wairoa meeting of Maoris in October, 1875, and were not disputed, and during the speeches made by the Maoris no claim was put forward of any agreement or bargain that had been made by the Crown to grant the lands under discussion to the loyal Maoris as sole owners; but throughout the meeting the Ngatikahungunu loyalists claimed through ancestry only. Again, at the investigation into the title to the land at the Native Land Court, the Ngatikahungunu relied, and succeeded, upon ancestry.

As agreed to at the Wairoa meeting of Maoris, the Native Land Court first dealt with two undisputed blocks on the 3rd November, 1875—viz., the Rotokakarangu and Putere Blocks—Toha Rahurahu nominating the owners in the latter block. The claims to the four blocks, in the following order—Tukurangi, Ruakituri, Taramarama, and Waiau—were heard on the 4th, 5th, and 6th November, when the Court decided "that, owing to the conflicting nature of the evidence, it was desirable that some one should go on to the ground; but, at any rate, no judgment would be given till a proper survey was made; that the Court would return to Wairoa for that purpose when the surveyors were prepared to put in a duly certified plan." On the 12th November, while the Court was still sitting on other business, Wi Hau Taruke and Hetaraka Whakaunu came into Court and stated, "We come to the Court and wish to say that we have withdrawn, on the

part of Te Urewera, our claims to Tukurangi, Waiau, Taramarama, Ruakituri; it is not our intention to come into Court again. We have arranged our dispute with Ngatikahungunu." Toha Rahurahu (representing the Ngatikahungunu) then said, "The evidence has been taken relative to these blocks referred to by Wi Hau Taruke. I apply for an order in favour of"—and he thereupon nominated the owners for each of the four blocks, the total number of owners so nominated being fifty-three; and the Court minute was as follows: "Memorial of ownership ordered for Waiau, Tukurangi, Taramarama, and Ruakituri as per lists above written. Court adjourned till surveys are complete for subdivision later. Date to be fixed." As an indication as to the persons nominated as owners of the four blocks by the Ngatikahungunu, reference should be made to the following statement made by Toha Rahurahu (Ngatikahungunu) at the meeting of Maoris on the 29th October: "Without prolonging the discussion to an unnecessary length, I may say that I am quite willing to admit the claim of one or two of you (Ureweras)—that is, those who possess an independent right to the Putere Block. But I have no intention whatever of consenting to all of you as having an interest in the land in question (the four blocks). Makarini te Wharehuia has no claim to any of the four blocks." It should be noted that the Urewera tribesman, Makarini te Wharehuia, was accordingly excluded from all the titles, notwithstanding he had got into the title of the Tukurangi Block under the deed of arrangement.

On the withdrawal of the Ureweras the granting of the titles to the four blocks was made without objection by any of the Natives, Toha Rahurahu's lists being accepted.

On the 17th November, 1875, the Crown, by deeds of conveyance, purchased the four blocks, Waiau, Tukurangi, Taramarama, and Ruakituri, for the sum of £9,700 paid to the loyal Maori owners, and £1,250 paid to the Urewera rebels. In 1867, £300 had been paid to Te Waru and the Ngatikahungunu rebels for their interests in the same blocks. 2,500 acres were set aside out of the blocks as reserves for the Urewera rebels, and 8,400 acres for the Ngatikahungunu—one reserve, called Makahea, of 500 acres, being subsequently purchased by the Crown. By these deeds of conveyance the loyal Natives obviously conveyed to the Crown the title they had acquired under the memorial of ownership granted them by the Native Land Court. On the 15th January, 1876, or two months after the deeds of conveyance had been executed, the following agreement was entered into:—

Memorandum of agreement entered into this fifteenth day of January, eighteen hundred and seventy-six (1876), between the chiefs of Ngati-Kahungunu, acting for and on behalf of their respective hapus, and Her Majesty the Queen.

1. That in consideration of the sum of fifteen hundred pounds sterling, paid by Her Majesty the Queen by the hands of J. P. Hamlin, the receipt whereof is hereby acknowledged, they the chiefs of Ngati-Kahungunu, acting for and on behalf of their respective hapus, their heirs or assigns, do hereby covenant and agree to convey absolutely all their right, title, and interest in the Waiau, Tukurangi, Taramarama, and Ruakituri Blocks, containing one hundred and fifty-seven thousand acres, more or less (157,000 acres), as the same is more particularly described by a deed bearing date the seventeenth day of November, eighteen hundred and seventy-five.

2. The chiefs further agree for themselves, their heirs and assigns, to release Her Majesty the Queen from any further claims for services rendered during the rebellion from the year eighteen hundred and sixty-five to the year eighteen hundred and seventy-six."

The foregoing agreement was signed by Ihaka Whanga and 440 other Natives, none of whose names appear in the memorials of title for the four blocks. It is evident, then, that the chiefs of the Ngatikahungunu signing the agreement were not conveying any title obtained by them from the Native Land Court, because they had none to convey. One must look elsewhere for an explanation of the right, title, and interest in the four blocks purported to be conveyed by the chiefs to the Crown. That explanation has been supplied by Mr. Hamlin and the Hon. J. D. Ormond in correspondence passing between them and Sir Donald McLean relative to and immediately prior to the signing of the above agreement. Mr. Hamlin, the Government Land Purchase Officer, writing to the Hon. J. D. Ormond on the 4th December, 1875, reported the completion of the sale of the four blocks on the 17th November, and added, "A further sum of £1,500 is to be paid to the loyal Natives of Wairoa, Mohaka, Nuhaka, and Mahia districts, as compensation for their claims on these lands acquired (*i.e.*, the four blocks), in accordance with agreement at Hatepe, 1867." The Hon. J. D. Ormond, forwarding Mr. Hamlin's communication

to Sir Donald McLean, in mentioning the money required for the whole transaction, wrote: "In this is included a sum of £1,500, which is to be paid in extinguishment of the claims of the loyal Natives who had an interest in the blocks given them by the Government in consideration of services during the war." And again later in the same letter he wrote: "I shall be obliged if you will cause £1,500 to be sent here to pay the Natives for their interest in the block." Sir Donald McLean, in reply, on the 13th December wrote that instructions had been telegraphed to Wellington to imprest to the Hon. J. D. Ormond the amount of money asked for by him. It is evident, therefore, that the £1,500 was forwarded by the Government to be paid to the loyal Natives in extinguishment of the claims to the loyal Natives who had an interest in the blocks given them by the Government at the Hatepe meeting in 1867.

It might be noted that the late Sir James Carroll was Clerk and interpreter to the Native Land Court investigating the titles to the four blocks, and, being a native of the district and a participant in the fighting against the Urewera rebels, it can fairly be assumed he was fully conversant with the truth of the Hatepe agreement. It is significant that Sir James during his long period of public service as Minister for Native Affairs and member of Parliament did not question the actions of the Crown with regard to the Hatepe agreement, or of the treatment by the Crown of the loyal Natives of the Wairoa district.

In anything I have stated I do not wish to detract from the valuable services rendered to the country by the Ngatikahungunu Tribe under the loyal chiefs Kopu amd Whaanga. Had it not been for their mana amongst the Maoris and their great fighting qualities, the rebels during the Hauhau rising would have inflicted much suffering upon the Europeans in the Wairoa, and the district would have been the scene of a long struggle between the two races, and it is doubtful whether the Europeans would not have been driven from that part of the coast.

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